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FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 1

TUESDAY, APRIL 17, 1973

Complete Proceedings on Bills C-170 and C-172,
intituled respectively:

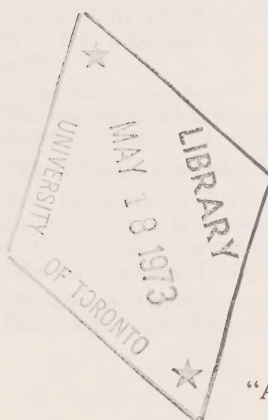
“An Act to amend the statute law relating to income tax”

and

“An Act to amend the Customs Tariff”

REPORTS OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio* members

(Quorum 5)

Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, April 17, 1973:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Carter, for the second reading of the Bill C-170, intituled: "An Act to amend the statute law relating to income tax".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Carter, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator McIlraith, P.C., for the second reading of the Bill C-172, intituled: "An Act to amend the Customs Tariff".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator McIlraith, P.C., that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, April 17, 1973.

(2)

Pursuant to notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 2.00 p.m. to examine the following Bills:

Bill C-170 "An Act to amend the statute law relating to income tax"

and

Bill C-172 "An Act to amend the Customs Tariff".

Present: The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Blois, Connolly (*Ottawa West*), Flynn, Hays, Lang, Macnaughton, Martin, McIlraith and Smith. (12)

Present, but not of the Committee: The Honourable Senators Asselin, Benidickson, Bourget, Carter, Choquette, Côté, Eudes, Forsey, Grosart, Hicks, Lafond, Laird, Langlois, Manning, McNamara, Michaud, O'Leary, Petten, Rowe, Sparrow and van Roggen. (21)

Upon Motion of the Honourable Senator Lang it was *Resolved*

That 800 copies in English and 300 copies in French of all day-to-day proceedings in this Committee shall be printed unless the Committee by *Resolution* otherwise orders.

WITNESSES:

Department of Finance:

The Honourable John N. Turner,
Minister;

Mr. M. A. Cohen,
Assistant Deputy Minister,
Tax Policy;

Mr. R. deC. Grey,
Assistant Deputy Minister,
Tariffs Trade and Aid Branch;

Mr. R. A. Short, Chief,
Corporation and Business Income Division,
Tax Policy Branch.

The Committee proceeded to its examination of Bill C-170, clause by clause, with the assistance of Mr. Cohen who answered questions put to him respecting each clause.

At 3.20 p.m. the Honourable Mr. Turner arrived and made a statement with respect to Bill C-170 and answered numerous questions posed by the Committee thereon and also made some general remarks respecting Bill C-172

and answered questions respecting the said Bill. At 4.40 p.m. he departed.

The Committee then resumed its examination of Bill C-170 with Mr. Cohen.

Following a lengthy discussion thereon and upon motion of the Honourable Senator Beaubien it was *Resolved* to report the said Bill without amendment.

The Committee returned to its examination of Bill C-172 and after discussion with Mr. Grey and upon motion of the Honourable Senator Hays it was *Resolved* to report the said Bill without amendment.

At 5.45 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

Reports of the Committee

Tuesday, April 17, 1973.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-170, intituled: "An Act to amend the statute law relating to income tax", has in obedience to the order of reference of April 17, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,
Chairman.

Tuesday, April 17, 1973.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-172, intituled: "An Act to amend the Customs Tariff", has in obedience to the order of reference of April 17, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,
Chairman.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Tuesday, April 17, 1973

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-170, to amend the statute law relating to income tax, and Bill C-172, to amend the Customs Tariff, met this day at 2 p.m.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: We have before us Mr. M. A. Cohen, Assistant Deputy Minister, Tax Policy Branch, Department of Finance, and we expect the minister to arrive at or about 3 o'clock. In the meantime I thought that Mr. Cohen could deal with whatever explanations are required with respect to the bill.

I think the simple way of doing this, instead of trying at this stage to pick particular clauses, would be just to start at the first clause and move along from there. When the minister arrives, of course, honourable senators might have particular questions to ask him. Is that acceptable to honourable senators?

Hon. Senators: Agreed.

The Chairman: Starting with section 1, or clause 1—and that provokes the first question I want to ask Mr. Cohen. I find a number of words used to describe what is the same thing. I find the words "clause," "section," "paragraph," and sometimes even "subsection," when they mean "clause". Is there any particular reason for this phraseology?

Mr. M. A. Cohen, Assistant Deputy Minister, Tax Policy Branch, Department of Finance: I believe there is a reason, Mr. Chairman. I am not sure that I can do justice to the explanation. It is really a matter of the practice adopted by the Department of Justice in establishing uniformity and consistency in the drafting of federal legislation. To that end, they have developed a sequence which goes, as I recall it: section, subsection, paragraph, subparagraph, clause and subclause. The bill becomes doubly complicated because the bill itself is dealing in clauses and subclauses whereas the statute deals in sections, subsections, paragraphs and subparagraphs.

The Chairman: So, in addition to the complications in the language of the bill itself, you have the complication of designation?

Mr. Cohen: That is right, Mr. Chairman. I might add that that change in the style of drafting legislation is a fairly recent one. It is reflected in the tax reform legislation, Bill C-259, which caused some difficulty for all of us who were used to the old way of referring to sections and subsections.

The Chairman: Well, in order not to offend the feelings of the Department of Justice officials and their appreciation of terminology, I will refer to it as number one—

Senator Connolly: In the bill, Mr. Chairman, it would be clause 1.

The Chairman: Yes, clause 1. As you will recall, we had an explanation last night with respect to clause 1. Perhaps Mr. Cohen would take three or four sentences now to tell us generally the purpose of this.

Senator Benidickson: Mr. Chairman, before Mr. Cohen goes into that, I should like to comment on the complexity of this bill for anyone other than an expert lawyer. In addition to that, it comes to us very close to the deadline for legalizing some of these things in connection with income tax payments for last year. There is nothing on the right-hand pages of the bill in the way of explanatory notes. In looking at Bill C-222, which was dealt with last year, explanations were not made invariably, perhaps, but—

The Chairman: May I just interrupt you for a moment, Senator Benidickson? If you will look at the bill as it went through first and second readings in the House of Commons, you will see that there were explanations on the right-hand side—

Senator Benidickson: The bill as introduced?

The Chairman: Yes, and there are also the markings for the proposed amended sections. It is only when the bill is passed in the other place that they do not print the whole thing.

Senator Benidickson: As passed in the Commons?

The Chairman: Yes, as passed. At that point you no longer get those notations.

Senator Benidickson: So that one would have to go back to the original bill as introduced in the other place?

The Chairman: Yes. It is for that reason that I have carried the original bill with me the whole time.

Senator Benidickson: I did not do that.

Senator Lang: Mr. Chairman, you made a suggestion last evening which, I feel, might expedite our proceedings today, namely, that the witnesses could, first of all, say what problems existed under the act as passed and how the amendments remedy those problems. Were we to adopt that format, I think it would expedite our proceedings.

The Chairman: Let that be the general basis of the questions, then. When we come to a clause, the two questions you will address yourself to, Mr. Cohen, are as follows: what was the problem in the act—

Senator Benidickson: Mr. Chairman, before you leave my point, I do not think you are entirely correct. My copy of the excise tax bill available to me in the chamber last night did have explanatory notes. The explanatory notes drew something to my attention that caused me to speak to Senator Lang, the sponsor of the bill. I do not know whether there is consistency about this type of thing or not.

The Chairman: I was not purporting to be preaching any consistency about it. I was saying that in relation to this bill you will find all the notations, and so on, at the first reading stage, and when the bill has been passed you will see they have all been omitted.

Senator Benidickson: Perhaps I will have to go back to my desk in the chamber and find the original bill.

The Chairman: We are now laying down a general rule for Mr. Cohen. The way I put it last night was that there were two important questions: First, what was the provision in the act, in the law? Secondly, what is the purpose of the particular clause in the bill dealing with that—what is it intended to cure or to add to, or anything else? That is the general guideline. We will start with clause 1.

Mr. Cohen: Clause 1 deals with what we call the automobile standby charge. Under the Income Tax Act, even before the tax reform, there was always an amount included in an employee's income if something was made available to him by his company. The usual item was an automobile. There was a great deal of difficulty in assessing the amount of the benefit to be included in an individual's income. In the tax reform will we established some minimums to give some clarity to the situation. We had a rule that dealt with automobiles that were owned by a company, and we had another rule that attempted to define and deal with automobiles that were leased by a company from a leasing firm. Some problems developed, and clause 1 is designed to relieve some of the anomalies that emerged from that original provision in the tax reform bill.

Two problems were dealt with. I will deal with the first problem and its solution, and then the second problem and its solution.

The first problem concerned the leasing of an automobile by a company from a car leasing operation. The difficulty was that in the typical lease there was more than the cost of the automobile involved in the leasing charge. Often there was an additional built-in charge for an insurance premium, maintenance and certain other charges. Typically, the company would make a single rental payment for the charge of the automobile. It was pointed out by the industry that this imposed an unfair burden when compared to the position of a company purchasing the car, because the purchase of the car could be isolated as an absolute cost, and some portion of that benefit passed on to the employee. When you dealt with a leased car, however, you were looking at a cost that included more than the automobile itself; it included the insurance premium in particular and the maintenance of the automobile.

Clause 1(1) is an attempt to withdraw from the leasing charge the insurance premium. It eliminates the insurance premium, and therefore puts it on a more parallel footing with a company that had purchased the car as opposed to leasing it.

I suppose I should comment that that leaves open the question of maintenance. However, maintenance proved too difficult to handle. It was too difficult to assess just how much of a charge was attributable to maintenance. It is my understanding that the practice has developed in the industry to have separate maintenance contracts, so that those who lease cars are now on the same footing as those who purchase cars, and it provides that neutral treatment as between the two.

Senator Connolly: Except in respect of maintenance.

Mr. Cohen: The clause now before you does not deal with the maintenance problem. To take a hypothetical example, if you leased a car which included maintenance in the leasing charge you would still be in that unneutral position; the charge would be overstated. I believe the practice has developed to sign two contracts, one to lease the car and a separate contract to provide maintenance if that is required, which is just the same thing.

Senator Connolly: For a second premium.

Mr. Cohen: For a second premium.

The second point deals with automobile dealers, and salesmen who work for automobile dealers. It was pointed out that this section worked fairly harshly on these people because, first of all, they were required to drive their cars, virtually as a matter of advertising and promotion for the company. Secondly, they were driving all sorts of different cars through the course of a year, so it became too difficult to keep charging the value of different automobiles to the individual employee. The bill now provides on an optional basis—it is up to the employee, if he wishes to deal with it on this basis—that an employee can bring into his income the average cost of all the cars the dealer is servicing. If one day he is driving a Volkswagen and another day he is driving a Cadillac, he will not be faced with a charge based on a Cadillac; it will be based on the average cost of all the cars the dealer sells.

Secondly, we have reduced the premium that we are passing on to the individual to three-quarters of what it would otherwise be, again in recognition of the fact that the employee of an automobile dealer must drive his automobile at all hours of the day as part and parcel of his business. That is what is being dealt with in clause 1.

The Chairman: Shall clause 1 carry?

Hon. Senators: Carried.

The Chairman: Now clause 2.

Mr. Cohen: Clause 2 is really a technical amendment. It just eliminates a redundant reference to a subsection. There is no change of policy.

The Chairman: That is where the word "redundancy" occurs for the first time, is it?

Mr. Cohen: I will probably use it often today.

The Chairman: Shall clause 2 carry?

Hon. Senators: Carried.

Mr. Cohen: Clause 3 deals once again with a technical anomaly in the tax reform bill. We had a provision that dealt with things that happened up to and including June 17, 1971; there was another clause which dealt with things that happened on and after June 19, and we managed to lose June 18. The purpose of this clause is just to pick up June 18.

The Chairman: You have not changed the general law in relation to how discounts are dealt with and the rights of the person who buys and the rights of the dealer making the issue.

Mr. Cohen: No, sir.

The Chairman: I think last night I gave an explanation of what the general law was. Shall clause 3 carry?

Hon. Senators: Carried.

The Chairman: Clause 4 is the thin capitalization.

Mr. Cohen: Thin capitalization, yes. This is a bit long-winded by way of an explanation. We have in the bill rules for thin capitalization. Very, very briefly, and quite oversimplified, where a corporation had debt that was more than three times its equity—that is, where it was loan-financed or debt-financed more than three times its paid in capital, if you will, and if that corporation was foreign controlled, then the tax reform bill disallowed the interest that was relevant to the excess over the three-to-one ratio. That is the basic provision. This is a relieving change. Under the old bill we were measuring the equity at one point in the year.

The Chairman: That was at the beginning.

Mr. Cohen: At the beginning. This change permits the company, in effect, to take its best position through the year. If a company increases its equity as the year progresses, it will not be penalized because it offended the three-to-one ratio at the beginning of the year.

The Chairman: I think this was a vehicle you found was being used to some extent by non-residents, because the interest charges, as such, would be deductible from operations, and the tax exposure would be less.

Mr. Cohen: That is quite right. That goes back to the earlier tax reform bill.

The Chairman: Shall clause 4 carry?

Hon. Senators: Carried.

The Chairman: Clause 5.

Mr. Cohen: Clause 5 deals generally with the way we treat the discounts on certain obligations. The amendment now before you is a technical amendment. It was necessary in order to ensure that amounts paid with respect to principal payments in any preceding year are taken into account in determining the amount of the deduction for payments made in the current year. I appreciate that is quite technical. It is essentially making sense out of an anomaly that existed. There is no basic change in the policy in this clause. One might say this is a consequential or technical amendment.

The Chairman: Shall clause 5 carry?

Hon. Senators: Carried.

The Chairman: On clause 6, we have been getting some contributions in very descriptive language.

Senator Connolly: From non-farmers.

The Chairman: There have been some contributions very recently from some of our senators.

Senator Hays: The eaters of cheap beef.

The Chairman: They have been as to the effect on farming businesses. One senator has suggested that this might be the equivalent of the corporate rip-off which has been extended to the farmer as a farming rip-off.

Mr. Cohen: I hope not, sir.

The Chairman: Would you care to express your view as to what problem you were addressing yourself to, and what answer you think you have accomplished?

Mr. Cohen: I think you have loaded that question, sir.

The Chairman: Yes, I guess I have.

Mr. Cohen: The problem we were facing was that of the farmer starting out in business, starting out with a live-stock herd. Let me preface this by saying we are not dealing with a basic herd; this is a non-basic herd situation. The difficulty was that, traditionally and typically, when a farmer starts up in business he has losses and it may be many years before he turns into a profitable position. The general rule in the Income Tax Act, however, is that you can only carry forward your losses for five years. Hence, situations were bound to develop where the losses were stale dated, and the farmer could never take advantage of them or make use of the losses because his profits would not start to show up until he was five, seven, eight or nine years, after the five years. What this provision does—and I hope it does not do anything more, senators—is permit the farmer to prevent the stale dating of those losses, by overstating his income in the early years, and thereby the loss would not appear, or the deduction that would otherwise have created that loss would not appear, until such time as he is ready and able to take advantage of that loss. I do not believe there is any double counting or any loophole there. It may transpire, in the fullness of time, that that is not the case. That is what this is designed to do.

A senator may say it is anomalous to say that a farmer can overstate his income. What he is doing by writing up his income is not reducing his loss in year one but letting that loss come into year six or seven or ten, when otherwise he might have taxable income. That is the position.

The Chairman: In this clause, when you talk about writing up his inventory, this clause gives him the right to put a value on those cattle he has acquired.

Mr. Cohen: That is correct, sir.

The Chairman: At any value from zero to fair market value.

Mr. Cohen: That is correct.

The Chairman: Then, within that scope, there is an opportunity for more than just writing up his inventory; he may, in effect, be writing it down.

Mr. Cohen: That is also possible.

The Chairman: What you are doing is giving him the opportunity to defer income until another year when he may need it more.

Mr. Cohen: That is possible, senator.

The Chairman: You also give him a right to change the value of the same inventory from year to year.

Mr. Cohen: That is also correct, senator; but it comes down to a matter of time. I do not think he can take that expense more than once. It is a question of how and when he may take it. What this section is doing is permitting him to take it in the manner most beneficial to him. I do not believe there is a double counting.

Senator Hays: Mr. Cohen, he can do this in any event, now?

Mr. Cohen: He cannot, senator, because right now most farmers are on a cash basis. That means they bring into income the cash they receive and they can deduct the cash that they lay out. They do not have an inventory in that sense. Inventory is merely an aspect of accrual-based income. What we are doing is giving to the cash basis of the farmer some of the advantages of the accrual-based taxpayer without putting him on a full accrual basis.

Senator Hays: But on a cash basis at the end of his year, or previous to the end of the year, he can go out and purchase, if he has made a profit, and defer that and carry it forward.

Mr. Cohen: I am sorry, senator . . .

Senator Hays: Let us use an example. Supposing that he had made \$5,000 at the end of the year, and he had his books all made up. Suppose it was three weeks before the end of his year and he went out and bought \$5,000 worth of cattle. He would carry them over and he would not show a profit. In subsequent years, he would buy more cattle. If he made another \$5,000 the next year, he would buy another \$5,000 worth of cattle, and so he would keep on deferring his profit.

Mr. Cohen: In this instance he would actually have expended on them. If a farmer goes out at the end of the year and buys \$5,000 worth of cattle, that would be a cash expenditure and that would be a deduction to him. However, he may not be able to use that loss if he has no income for the year; what this section is doing is permitting him to write up that \$5,000 purchase as inventory.

Senator Hays: Without purchasing?

Mr. Cohen: In the example, he has purchased \$5,000 worth of cattle and that would produce a loss. If he elects—and this is an elective provision—he can value the cattle as a \$5,000 inventory; the value of the inventory will offset the \$5,000 of cattle expenditure that he made at the end of the year, and therefore it will not produce the loss he would otherwise have.

The Chairman: He could devalue that inventory that he had bought for \$5,000, and paid for it, and then value it at \$1,000 in his return for that year?

Mr. Cohen: He could.

The Chairman: Then he has a deferral until the next year.

Mr. Cohen: Until he realized his inventory. That is the position of the accrual taxpayer, except that the accrual taxpayer cannot value up and down.

Senator Hays: No, he has to be stable.

Mr. Cohen: This is a flexible approach, designed to do nothing more than prevent the occurrence of unusable losses. It may be that there are some opportunities implicit in this that we were not aware of, and we will have to watch it.

Senator Hays: Why watch it, if it is good?

Mr. Cohen: I cannot help questioning whether you think it is good or not.

Senator Hays: You call it the cash method. Really it is the old cash basis, is that correct?

Mr. Cohen: That is correct.

Senator Hays: Then, if he made a \$15,000 profit and bought \$15,000 worth of cattle, when he balanced his books he had neither profit nor loss but was just even, and he then goes out and he does this also for several years—instead of buying cattle, what if he wanted to buy bull semen, would he be permitted to do that?

Mr. Cohen: I do not believe, sir, that that would be part of his inventory. I do not believe the semen would be considered livestock.

Senator Hays: How would he get the livestock if he did not have the semen?

Senator Connolly: You answer that.

Senator Hays: I am quite serious about this. This is what the bull is all about. That is what you use it for.

Mr. Cohen: Obviously he has to arrive at his cattle, but this section—

Senator Hays: You are a policy maker and we are trying to define some policy.

Senator Lang: Mr. Cohen comes from Toronto; he is not a farmer and I think the question is rather unfair.

Mr. Cohen: Thank you, senator.

The Chairman: It may be that if you put it in the category of policy, the question should be addressed to Mr. Turner. He will be in later. There may be a limit to the distance that Mr. Cohen wants to go in expressing a view on this.

Senator Connolly: I have an idea that you had better get this answer from Mr. Cohen.

Mr. Cohen: All I can answer, as a matter of explanation and not as a matter of policy, is that I do not believe that livestock would include semen, but I take your point and it is something to which I will draw the attention of the Minister and have the question of policy pursued.

The Chairman: Following the definition section of the Income Tax Act, farming is defined as including cattle raising or livestock raising.

Mr. Cohen: Yes.

The Chairman: And this is an essential part of that operation. It may be it would be a farming operation.

Mr. Cohen: I do not deny that. Certainly, it would be a farming operation, but whether it would be livestock—

Senator Hays: Let me use another example. Suppose he comes up to the end of his year, and it is February, and he has 350 cows. Now, 70 per cent of all the dairy cows in Canada today are artificially inseminated with bull semen. He decides that he is going to buy semen instead of buying cattle, at the end of the year, which he will use in May. Would that not be considered in the livestock operation, or cattle?

Mr. Cohen: Senator, perhaps we are at cross-purposes. There is no question that that is a deductible expense, if he makes it. This is not designed to deal with that problem. This is designed to stop his being forced to take the deduction. He is limited at the moment to valuing the livestock herd of one sort or another.

If I may say, sir, what you are asking me is equally applicable to feed, for example. We just do not carry anything like feed or semen, or anything of that sort, as an inventory that one can value up and down. That does not mean he is not getting the full benefit of that deduction in computing his income.

Senator Hays: So if you are on an accrual basis you must carry semen along with cattle in your inventory.

Mr. Cohen: Yes, that is right. Either way you are getting the deduction.

Senator Hays: You say he can elect. Is this just for new livestock?

Mr. Cohen: It is for anyone with a livestock herd that is not a basic herd.

Senator Hays: It would not matter how long he has been in business.

The Chairman: It is for any length of time.

Does clause 6 carry?

Hon. Senators: Carried.

The Chairman: Clause 7.

Mr. Cohen: Clause 7 deals with hobby farms. As I am sure you are aware, honourable senators, there is a limitation on the extent to which you can claim a loss on the operation of what is loosely called a hobby farm. This clause is designed as a relieving measure in the case of a farmer who, in conducting what the law would classify as a hobby farm, expends funds on scientific research. Scientific research is a defined term in the Income Tax Act, and the expenditure has to be of a type approved by the federal government and what-have-you. Previous to this new clause the expenditure on scientific research would be included as a part of the loss which could not be carried forward, could not be made use of. It would be limited. Essentially, there is a \$5,000 loss. Just to give you an example, apart from any scientific research expenditures, if you had a \$7,500 loss from a hobby farm and in addition to that had a \$5,000 expense for scientific research, in total you would have had \$12,500 of expendi-

tures but the act would only permit you to deduct \$5,000 against other income.

Without getting into the mechanics of it, the effect of the clause is that in respect of the \$7,500 you get \$5,000, and you also get \$5,000 in respect of the scientific research in addition. It is not part of the loss that is prescribed by the hobby farm rules.

The Chairman: You can use income other than farming income for the scientific research.

Mr. Cohen: You can deduct it against other sources, yes.

Senator Benidickson: Mr. Chairman, I now have a copy of the bill as introduced in the other place, and I see in the explanatory notes on the right-hand side of this version, at page 6, dealing with clause 7, that it says:

This clause would implement paragraph (5) of the Income Tax motion, which reads as follows:

And then there follows paragraph (5) of that motion. Is that the same thing as what we used to call a ways and means resolution?

Mr. Cohen: That is right, sir. This is now called a ways and means motion, but it is the same thing; it is the successor.

Senator Benidickson: It is one of those paragraphs provided after the budget speech of the Minister of Finance.

Mr. Cohen: Generally speaking, sir, the particular ways and means motion that you have referred to there is not the ways and means motion that was tabled on the night of the budget, February 9. No doubt you will recall that on March 29 the Minister of Finance tabled in the other place a new ways and means motion which superseded the ways and means motion that had been tabled in the other place on February 9, budget night.

Senator Benidickson: I read the debate in the other place very hurriedly because of the limited, time available, but, if I recall correctly, I am not too old-fashioned, because Mr. Lambert, the Opposition critic in the House of Commons, said in connection with this bill that there was more than one preceding resolution and he called it a ways and means resolution, not an income tax motion. That is why I was a little confused.

The Chairman: Does clause 7 carry?

Hon. Senators: Carried.

The Chairman: Clause 8.

Mr. Cohen: Clause 8 deals with the computation of the income of a professional. The best way to explain it is to give an example. A typical example would be a lawyer.

The Chairman: Last night I was asked if an engineer would be included and I said yes.

Mr. Cohen: Yes, it would apply to anybody, but the most common example is a lawyer who gets a retainer for services not yet rendered. This clause permits him to not take into account those retainers.

The Chairman: Under the present law he has had to.

Mr. Cohen: Under the tax reform act he had to.

The Chairman: Shall clause 8 carry?

Senator Lang: Mr. Chairman, I should like to get the principle of clause 6 carried into clause 8. I think it would be very beneficial.

The Chairman: Yes, I agree.

Mr. Cohen: Perhaps I should point out, senator, that as a professional you are not carrying an inventory and you are not being taxed on a full accrual basis. The price of carrying that principle into clause 8 would be to put a professional on a full accrual basis, and I am not sure that would be popular.

The Chairman: You are not sure? You know it would not be. Does clause 8 carry?

Hon. Senators: Carried.

The Chairman: Clause 9.

Mr. Cohen: Clause 9 deals with some changes to what is commonly called the "departure tax" when an individual leaves Canada. It makes several changes, all of which are relieving. Perhaps the most important change in it is that under the old rule, if you left Canada and you owned certain kinds of property—what we would call non-taxable Canadian property, a typical example of which would be a portfolio investment in a listed company, or some property which was not Canadian property—you were deemed to have realized—

Senator Benidickson: When you speak of the "old rule," you are referring to the rules provided by Bill C-259, are you, the new, basic Income Tax Act of 1971?

Mr. Cohen: Yes, sir.

Senator Flynn: Just to clarify that point, would you say that the rule would apply from the January 1, 1972, to the date of the budget?

Mr. Cohen: I am sorry, senator; I did not hear your question.

Senator Flynn: The "old rule" that you are speaking of would apply for those three or four months, would it?

Mr. Cohen: All of these amendments go back to January 1, 1972, I think without exception.

Senator Flynn: You are amending the act from the beginning?

Mr. Cohen: Yes, sir.

Senator Flynn: There is no old rule, then, because it never applied.

Mr. Cohen: The rule before the amendment.

Senator Connolly: I should like to ask a question supplementary to Senator Flynn's. As you know, Mr. Cohen, the Senate committee made certain recommendations with respect to changes in the tax reform bill. Most of those changes, as I understand it, have been made or are about to be made in the Income Tax Act, so that the effect of making these changes now does not disaffect people who might have been caught by the actual wording in the tax reform measure as passed at the end of 1971. In other words, the recommendations made by the Senate are now

going to be retroactive to the original effective date of the bill.

The Chairman: Senator, on page 10, subclause (2) of clause 9, which we are looking at at the moment, reads as follows:

(2) This section is applicable to the 1972 and subsequent taxation years.

I suggest that that answers your question.

Senator Flynn: It is a confession that the former bill was wrong.

The Chairman: Is any further explanation required on clause 9 concerning departure from Canada?

Shall that clause carry?

Hon. Senators: Carried.

The Chairman: Then, that takes us through to page 10.

Mr. Cohen: Clause 10, senators, is a consequential amendment arising as a result of an amendment to another clause altogether.

The Chairman: Do you want it to stand, and come back to it?

Mr. Cohen: I could attempt to explain it, but I think the explanation that gives rise to this will come up later in connection with clause 18.

The Chairman: Shall we let it stand then until we deal with clause 18?

Hon. Senators: Agreed.

The Chairman: Then we come to clause 11.

Mr. Cohen: This is a relieving amendment to section 51 of the Income Tax Act and it permits common stock to be exchanged for common stock without creating any realization of a capital gain. In the section as it was before being amended, you could only move from preferred to common or from preferred to preferred. Now you can move from common to common. A number of public companies have taken advantage of this provision. There are various names for this. We used to call it the Class A, Class B shares.

Senator Beaubien: That means that if you exchange Class A for Class B shares which have the same value, there is no tax?

Mr. Cohen: There is no realization of a capital gain. This is, in effect, extending a rollover provision.

Senator Benidickson: They would have the same value but not necessarily the same rights?

Mr. Cohen: They need not necessarily have the same value, senator.

Senator Hicks: But then, when you did pay tax on them, you would pay the capital gain in relation to the tax on the share originally held before the exchange?

Mr. Cohen: The cost would be the relevant factor, and the cost would be your historical cost.

Senator Hicks: This is merely postponing the tax.

The Chairman: Shall clause 11 carry?

Hon. Senators: Carried.

The Chairman: Then we come to clause 12 at the bottom of page 10.

Mr. Cohen: Clause 12 adds a new subsection 52(1.1) to the Income Tax Act, and it gives a cost to the specified property of a non-resident which otherwise would have no cost. This is relevant to computing the capital gain of a non-resident when he disposes of taxable Canadian property. There were some anomalies in the old statute—that is Bill C-259—which failed to recognize the right cost. As you know, in computing the gain from a transaction you have your proceeds of disposition and you are permitted to deduct from that the cost, and this clause clarifies the cost of certain assets.

Senator Benidickson: The fact that there is a black borderline to the left of the wording of clause 12 is notice to us that it is new?

Mr. Cohen: I think that is the style adopted to indicate where the change in the section is taking place.

Senator Flynn: That is in the first reading of the bill as presented in the House of Commons.

The Chairman: That is right, but it indicates where the amendments have been put in.

Are there any further questions on clause 12? Do you want to elaborate your answer any further, Mr. Cohen?

Mr. Cohen: What I really was speaking to was clause 12, subclause (1). There are several other subclauses in here dealing with other matters. Subclause (2) is also a consequential change occasioned by the change in the taxing of distributions of property from an employees' profit-sharing plan. The main clause dealing with an employees' profit-sharing plan and permitting the rollout of securities from an employees' profit-sharing plan is in clause 49. This is a consequential change on the more important change in clause 49.

Subclause (3) is a technical amendment designed to ensure that the untaxed half of a capital gain of a unit trust can be passed out to beneficiaries tax-free when distributed on a current basis. There was some concern that the law was not clear enough. As you know, you can take half the gain into your income and the other half is not intended to be taxed, and here you have a capital gain being realized by what is essentially a financial intermediary that is given conduit treatment; the change is to make it perfectly clear that the untaxed half, which is not taxed in the hands of the unit trust, passes out to the holder of that unit without any further tax.

The Chairman: Shall this clause carry?

Hon. Senators: Carried.

The Chairman: Then we come to clause 13.

Mr. Cohen: Clause 13 again covers a range of items. Subclauses (1), (2), and (4) of clause 13 are all consequential changes from clause 22. The whole thing is essentially consequential. These are designed to give the right cost figure in computing a capital gain. As I mentioned before, you have to look at the sale price and you have to look at

the cost and, in technical parlance, the cost is really the adjusted cost base that is, your cost and your adjustments; for example, you may buy an asset and you may have further expenses so you add that, and then you may have some return of capital and you deduct that. It is quite a complex calculation that produces the adjusted cost base, which is what you have to subtract from the proceeds of sale. Whenever we change elsewhere in the statute some of the rules relating to taxation of capital gains there is invariably a change required in this base adjustment.

The Chairman: When you are talking about cost base, really what you are talking about is every element that enters into the cost.

Mr. Cohen: That is right, sir.

The Chairman: And that is really what we call the adjusted cost base.

Mr. Cohen: Well, the end result is the adjusted cost base.

The Chairman: And in determining whether there is a gain or not, you take the proceeds of the sale and you take that adjusted cost base and you deduct it and then you arrive at what the gain is.

Mr. Cohen: That is right.

The Chairman: And this clause is of assistance in clarifying how to arrive at cost—that is, your adjusted cost base.

Mr. Cohen: That is correct, sir.

The Chairman: Any questions?

Senator Hays: Would that include the recapture of depreciation and that sort of thing?

Mr. Cohen: No, sir, that is a different matter. Recapture of depreciation is not a capital gain. We are talking here only about capital gains, and that is on the disposition of capital property. Depreciable property is dealt with differently; that is, except insofar as you dispose of depreciable property for more than you originally paid for it—then you get into the capital gain area. Recapture is really recovery of income and is not a capital gain. Therefore, it is not affected by adjusted cost base.

Senator Lang: Are there some examples, Mr. Cohen, that you can give us?

Mr. Cohen: Let me see if I can find an easy one.

Senator Lang: I suppose legal fees for an expropriation or something like that would be one?

Mr. Cohen: That would be an example although not one referred to in the clause that you have before you now.

The Chairman: Carried?

Hon. Senators: Carried.

The Chairman: The next is clause 14.

Mr. Cohen: That is a little easier and I can explain it a little more meaningfully. As you know, we exempt from the capital gains tax principal residences, and the purpose of clause 14 is to extend the definition of "principal residence" to include a leased property. Many homes today are bought on a lease, either short-term or long-term. The

problem area is the long-term lease. A number of provincial programs provide subsidized housing through leasing.

Senator Benidickson: Do you mean there is an option to buy?

Mr. Cohen: That would also be included, provided the taxpayer was living in the property.

The Chairman: The wording is "a leasehold interest therein or a share of the capital stock of a co-operative housing corporation". Those are generally provincial enterprises, and that might be the principal residence of the person.

Mr. Cohen: That is right.

The Chairman: And you recognize that in this section?

Mr. Cohen: Right.

The Chairman: Is that carried?

Senator Grosart: Mr. Chairman, how far does the definition of "principal residence" go in the act itself? Have we referred, for example, to condominiums? They are not leaseholds, but are principal residences in one sense but not in the traditional sense of the privately-owned dwelling. Could you give a definition of "principal residence"?

The Chairman: Section 54(g) of the act gives the definition.

Mr. Cohen: There is no definition spelled out for a principal residence beyond section 54(g). To answer your specific question, however, relating to the condominium, which I know has been the cause of some concern, it is our understanding that the Department of National Revenue, based on an opinion of the Department of Justice, holds the view that a condominium is a principal residence. I must confess that we thought about spelling it out, but realized that doing so might raise more problems that it would solve, because there are other types of ownership.

The Chairman: When a person buys a condominium he acquires title to it and becomes the owner.

Mr. Cohen: I recall from my days in practice all this difficulty with respect to what a person does own. I quite agree with you as a legal man.

Senator Grosart: Would this apply also to townhouses?

Mr. Cohen: A townhouse is just a house, and it would turn on the facts; it is certainly capable of being a principal residence. There is no question about that.

Senator Grosart: Then why was it necessary to ask for an opinion from the Department of Justice as to whether or not it was a principal residence in the case of a condominium?

Mr. Cohen: That was necessary only because of the peculiar nature of one's interest in a condominium. When you refer to a townhouse, I presume it is a situation in which a person has bought the fee simple to the property, just the same as buying any other house. My recollection is that the ownership of a condominium is derived under the authority of a provincial statute which gives, if you will, an ownership interest in the third floor, north-west corner. The land upon which the property is built is not

owned. This raises all sorts of difficult legal questions as to whether or not the taxpayer owns, in that colloquial sense, the principal residence. That is the reason for our concern with regard to condominiums.

Senator Grosart: The reason I raise the problem of the townhouse is that as a matter of semantics a townhouse can be really nothing more than a condominium, in that it is row housing.

The Chairman: Yes, but the purchaser of a townhouse obtains title to the land.

Senator Grosart: There are new developments in which that is not so.

Senator Benidickson: That is a condominium scheme.

Senator Grosart: No, it is known as a townhouse, or row housing, where the land, for various reasons, is not owned.

The Chairman: That may be something that Mr. Cohen and his department may have to consider in the near future.

Senator Flynn: Going further, to qualify the type of lease that is a principal residence, a condominium is clearly the ordinary ownership.

The Chairman: It is a matter of interpretation. The purchase of townhouses without title to the land is becoming more common now. I am not right up to date in this, but I think I understand the condominium principle pretty well. It may require provincial statute law. Some may exist, but I do not know of it.

Senator Flynn: The problem in the case of a long-term lease is that the owner may not have an immovable right, but only a personal right. That had to be considered, but not under the civil law, because the lease gives an immovable right, a real right.

The Chairman: Does clause 14 carry?

Hon. Senators: Carried.

The Chairman: We turn now to clause 15, Mr. Cohen.

Mr. Cohen: Clause 15 is simply a correction of the French translation.

The Chairman: Senator Flynn, have you nothing to say with respect to the translation in clause 15?

Senator Flynn: I do not know; I did not read it.

The Chairman: In the meantime, we will carry it and return to it if you do not like it.

Senator Lang: Carry it in English!

The Chairman: Shall clause 15 carry?

Hon. Senators: Carried.

The Chairman: We will move to clause 16.

Mr. Cohen: Clause 16 corrects a technical feature of section 60(m) of the Income Tax Act, which now prevents an intended deduction for taxpayers. This section is a carry-over from the pre-1972 taxation statute and was dependent upon the existence of the federal Estate Tax

Act. It provided a credit for federal estate taxes and was keyed into the Estate Tax Act. When part of Bill C-259 eliminated the federal Estate Tax Act the section no longer operated because it depended upon a reference to that act. The clause before you simply makes the section operative by redrafting it without changing the policy in any way. It makes it no longer dependent upon the federal Estate Tax Act.

The Chairman: On page 15 in that clause there is something more with respect to provincial succession duties applicable to certain properties.

Mr. Cohen: That is all part of this correcting amendment. There is no change in the policy.

The Chairman: Paragraph 60(m.1) on page 15 is the amendment.

Mr. Cohen: That is what was dependent upon a reference to the federal Estate Tax Act.

The Chairman: And there is no other change to the proposed law?

Mr. Cohen: No, sir.

The Chairman: This is just a restatement, eliminating the reference to the Estate Tax Act?

Mr. Cohen: Yes, so that the section can work.

The Chairman: Are there any questions with respect to this clause? Shall clause 16 carry?

Hon. Senators: Carried.

The Chairman: We now come to clause 17.

Mr. Cohen: Clause 17 simply extends the ambit of those authorized to sell income-averaging annuities. Under the provisions of the tax reform bill it was limited to life insurance companies, and it is now extended to permit trust companies to sell this special type of income-averaging annuity so that there will be no lack of neutrality in the competition between the two types of institutions.

The Chairman: Shall clause 17 carry?

Hon. Senators: Carried.

The Chairman: Clause 18 relates to the consequential clause 10.

Mr. Cohen: That is right. There are several subclauses contained in clause 18. Clause 18(1) is a technical amendment which orders the sequence of deducting Canadian and foreign exploration and development expenses. The amendment provides that foreign exploration and development expenses will be deducted first, then Canadian exploration and development expenses. The reason for the change is that we have much more limited scope in how you can use the foreign exploration and development expenses and much wider latitude in using the Canadian exploration and development expenses, and therefore it is in the interest of the taxpayer to be able to use the more limited deduction first and have the broader deduction available.

The Chairman: The foreign deduction has to be related to his foreign source income.

Mr. Cohen: That is right; but his Canadian could also be used up against his foreign income. If the Canadian E & D gets used up against his foreign income, he cannot use his foreign E & D.

Senator Grosart: I am a little perplexed by the use of the phrase "foreign exploration." I know it is a short-cut. Really it is not foreign exploration. It is exploration by foreigners.

Mr. Cohen: No; it is exploration carried on outside Canada by a Canadian company. It is a defined term used in the statute. It applies to Canadian companies carrying on exploration outside Canada. It is foreign in that sense.

Senator McIlraith: It is exploration in foreign territory. It is not foreign exploration.

Mr. Cohen: It is not exploration by a foreigner.

Senator Grosart: It is a very bad phrase. I do not like the phrase.

Senator Connolly: There is a statutory definition for it.

Mr. Cohen: Yes. It is defined in paragraph 66(15)(e) of the Income Tax Act.

The Chairman: And it is defined as you stated it?

Mr. Cohen: That is right.

The Chairman: The clauses are carried?

Hon. Senators: Carried.

The Chairman: We go on to clause 19, on page 19.

Mr. Cohen: Clause 19 covers a lot of territory. Clause 19(1) really is just clarifying. There are a number of references in the statute, in section 70, as to when a deemed realization on death occurs. Subclause (1) is really clarifying whether that deemed realization is to occur immediately before or after the individual died. It is purely clarifying and does not change any of the basic policy that was contemplated in the tax reform bill itself. But there was some ambiguity experienced by lawyers. Essentially this is saying that it does not matter whether it was before or after.

Senator Flynn: I wondered why the amendment was made.

Mr. Cohen: Lawyers seem to feel that we should clarify it, to make sure that it does not matter. So we did.

Senator Flynn: A day may make a difference, so far as shares and quotations on the stock exchange are concerned.

Mr. Cohen: That can affect the value. That is a relevant fact. With regard to the before or after, we wanted it to be on a consistent basis.

Senator Lang: I gather the effect of this is that if a man should die, and he was a principal executive officer of a company that depended on his skills and abilities, the value of his "A" shares may go down to minus 50 per cent, but the Exchequer will pick up the tax based on their value before he died.

Mr. Cohen: The act does not specify one way or the other. I think, senator, that is an administrative practice.

the answer is that where you have a holding which is affected by death, that ought to be discounted into the fair market value even during his lifetime. For example, the shares of a one-man company are often valued at something less than shares which are widely held, even during the lifetime of that man, for precisely that reason.

The Chairman: You have that in certain areas of legislation. I think that in the federal succession duty, the inheritance tax, that duty was recognized.

Mr. Cohen: The old Income Tax Act was silent on the question. It is open to anybody to argue the value.

The Chairman: Clause 19 continues for a number of pages. It deals with different subject matters.

Mr. Cohen: It deals with different subject matters, all dealing with the problem of death and what happens on the deemed realization of capital property. The second subclause in clause 19 is concerned with what we call the rollover to the spouse. This is a situation where an individual dies and leaves his property to his spouse. Whether it is from the husband to the wife or from the wife to the husband, it does not matter; there is no deemed realization of the capital gains at death.

There were a number of problems that emerged in the practical application of this section, particularly as they concerned property that was left through a trust. A typical example is a will which provides life income to the spouse, the remainder to the children. There were a number of problems involved. Often the estate was charged with payment of death duties for life legacies and things of that sort. This accommodates all of the problems of which we are aware, those posing difficulty in the proper application of this section.

The rules themselves are quite complex. I believe they deal with the problem, and I believe we have not had any adverse criticism or suggestions from the professionals who are working with this section. Everyone seems to be reasonably satisfied that mechanically it works.

Senator Flynn: With regard to cases that have been settled, will they be adjusted?

Mr. Cohen: Yes. I think I can say without exception that everything in this measure before you is retroactive to January 1, 1972, the date that the tax reform bill came in.

Senator Hays: Turning to page 24, is that also part of clause 19? If a property is transferred from a farmer to his son after death, is the son automatically regarded as being a farmer?

Mr. Cohen: Yes. Clause 19 refers also to the farm rollover on the transfer not to the spouse, but to a child.

Senator Hays: Or a grandchild.

Mr. Cohen: Or a grandchild.

Senator Hays: Whether they were actively engaged in the business at the time of death?

Mr. Cohen: The property has to be used as a farm at the time, either by the farmer or by his family.

Senator Hays: If it were being used as a farm, and the son was driving a truck, he would be regarded as being a farmer, as far as the act is concerned?

Mr. Cohen: Not the son; but the father was.

Senator Hays: But then the son could be. Does he actually have to be engaged in farming—

Mr. Cohen: The son? No. The property in question has to be used as a farm, either by the father or the son, at the time of death. That is the critical test. If the father were farming and the son were living in the city, that would be all right; and vice versa.

The Chairman: When we say "son," the statute says any children.

Mr. Cohen: That is right.

The Chairman: A child is defined to include the child of the child, and therefore it includes the grandchild and great grandchild. You go down the line quite far.

Shall clause 19 carry?

Hon. Senators: Carried.

The Chairman: We now go to clause 20, on page 25.

Mr. Cohen: Clause 20 is in the same vein as clause 19, clarifying this business of before death and after death, and making certain and clear that it does not matter.

The Chairman: Then you should note that we were right on the amendment that was made in committee.

Mr. Cohen: That is right.

Clause 20 also includes the extension of the farm rollover—that is, the rollover from the father to the children—that was originally proposed when the bill was first introduced in the other place, as a rollover on death. Clause 20, as amended, now indicates that it is extended to transfers or sales during lifetime.

The Chairman: That is on page 26?

Mr. Cohen: That is correct, Mr. Chairman.

The Chairman: Clauses 20.1 and 20.2 deal with that.

Senator Flynn: Does this apply in the case of a transfer from a father to a son and a subsequent transfer from the son to his son?

Mr. Cohen: Yes, senator.

Senator Flynn: I am not speaking of a direct transfer from the farmer to the grandson, but a transfer involving three generations.

Mr. Cohen: There is no limit as to the number of times one can avail oneself of this section.

Senator Hays: So we have a new tax act.

Senator Grosart: The phrase used is a child, a child of his child, or a child of his child's child. This would seem to assume that it must be in a direct line. Would it exclude, for example, a grandson who was, in effect, the nephew of the previous owner? I think that is an important point. Let us say I am the grandson of the man who owns the farm. In other words, my father did not own it, but I am the son or the daughter of the—

Mr. Cohen: I think I understand what you are asking, senator. Let me answer you, perhaps not directly, but by

trying to explain more clearly how it works. Let us take an individual and call him Mr. "A". Mr. "A" can transfer property to any of his children or any of his grandchildren—

The Chairman: Or any of his great grandchildren?

Mr. Cohen: Yes, right down the line. However, if Mr. "A" transfers the property to son number one, then son number one has to start over again. He can only transfer, using this rollover, to his direct descendents. He cannot transfer to his brother's son, although his father could have.

Senator Grosart: That is the point I wanted to clarify.

The Chairman: Are there any other questions?

Senator Sparrow: There is no provision in this bill with respect to the family farm corporation. Could you explain why that provision was not included?

Mr. Cohen: I think I will defer on that one, if I may. The minister spoke on that point in the House of Commons. It is really a matter of policy, so I think I should defer to the minister on it.

The Chairman: Perhaps you would make a note of that, Senator Sparrow, and put it to the minister when he arrives.

Do you have a question, Senator Benidickson?

Senator Benidickson: If my understanding is correct, clause 20 was amended in the other place.

Mr. Cohen: That is correct, senator.

Senator Benidickson: This, of course, gives ground for difficulty again. I have gone back to the original bill as introduced, which does contain explanatory notes. Were there many amendments in the other place? I did not look at them in detail.

Mr. Cohen: No, senator.

Senator Benidickson: Could we have some indication with respect to the clauses that have been changed—

The Chairman: We have dealt with some of them. If you look at page 26 of the bill as passed by the other place, clause 20.1 is a new clause that was added in the other place. This deals with "*inter vivos* transfer of farm property by farmer to his child", and that runs through to page 29 and covers various amendments. The second amendment made by the other place is dealt with in clause 20.2 and is to be found at page 29 of the bill as passed by the other place, running through to page 30. This, again, deals with the *inter vivos* transfer of property. That clause states that if the child is not 18 years of age—I think that is the age limit—and the child sells the property, the child is not subject to any gain that there might be, but any capital gains tax that might apply is the burden of the transfer or—that is, the father—who made the original *inter vivos* transfer.

Is that correct, Mr. Cohen?

Mr. Cohen: That is correct, Mr. Chairman.

Senator Benidickson: Mr. Chairman, when you give us references to page numbers of a version of Bill C-170, are

those the page numbers in the bill as originally introduced in the other place, or—

The Chairman: The page numbers I have given you are in the bill as passed by the House of Commons.

Senator Benidickson: The one where there is a blank insofar as explanatory notes are concerned?

The Chairman: That is correct.

Senator Hays: There is one other question I should like to ask.

Mr. Cohen: May I interrupt you, senator, in order to finish off that point?

There is another amendment that flows out of this in connection with *inter vivos* rollover of the farm property to the child. You will find it on page 127, clause 75(19) and (20) of the third reading version of Bill C-170. This is part and parcel of the same thing, but I give you that reference so that your question is completely answered.

The only other amendment that was made in the other place appears on page 63 of the third reading version of Bill C-170, and it is clause 35(6.1). If you wish, when we get to it, I will explain to you what the nature of that amendment is. Those were the only amendments made in the other place.

Senator Hays: If the farmer gives his property to his spouse, then she becomes the farmer insofar as this bill is concerned, does she not? You mentioned "his child."

Mr. Cohen: I should not do that.

Senator Hays: Well, this appears in the bill as well.

Mr. Cohen: It is somewhat interchangeable.

The Chairman: Shall clause 20 carry?

Hon. Senators: Carried.

Senator Lang: If the under 18 years of age transferee realizes a loss on the sale of the property, does that loss revert to the father?

Senator Flynn: It seems to, yes.

Mr. Cohen: No, sir.

Senator Lang: The answer seems to be "no"; in other words, it is a one-way street?

Mr. Cohen: He would have the loss.

Senator Lang: The father would have the loss?

Mr. Cohen: The child would have the benefit of the loss, not the father.

Senator Lang: But does the father have the benefit of the loss?

Mr. Cohen: No, senator.

The Chairman: In that case, the marginal note is incorrect. The marginal note says: "Gain or loss deemed that of transferor."

Mr. Cohen: May I take a moment out for consultation?

The Chairman: Yes, certainly.

Senator Lang: I just read the clause and it does not seem to carry the loss back to the father.

Senator Benidickson: Which clause are you referring to?

The Chairman: Clause 20.2 on page 29.

Mr. Cohen: It seems I answered too quickly. The answer is neither "no" nor "yes". This is the same regime that we apply where property is transferred between spouses. As you will recall—and this has been the law for many, many years—where property is transferred between spouses or to children under the age of 18, the income from such property—not the gain from the disposition of such property, but the income from the property—has always been attributed back. In the tax reform legislation we attributed back to the spouse the net taxable gain or the net loss—not the actual loss, but the net loss—and that is also true for the child. It is possible that what the child would have to do is take into account his gains and losses on the transfer of the property, and the net loss, if there is a loss, would be attributable back to the transferor, not the actual loss *per se*. That is somewhat technical.

Senator Lang: I follow.

Mr. Cohen: I am sorry, I stand corrected again. It is the net gains that are attributed back.

To answer your question I should start from the beginning. If there is one piece of property transferred and it is sold at a loss, the loss does not go back to the transferor. It serves to reduce the net gains that are going back to the transferor, but the loss *per se* cannot go back to the transferor. I am sorry to confuse you.

Senator Flynn: Or the transferee?

Mr. Cohen: The losses available to the transferee are his loss to start with; he can use that and carry it forward. It is not likely to happen very often, but the real purpose of the provision is, with a child under 18, to prevent a taxpayer from easily avoiding his own high marginal rate of tax. For example, if I owned a farm and somebody approached me to buy it, I would have to bring any gain as part of my income. If there were not some limitation on this I could simply give the property to my infant child, who has no other income, and he would sell it, which would just be defeating some of the purpose of the act. This is really an anti-avoidance provision. It is not very likely, in other words.

Senator Flynn: The reason is not that clear when you take a loss.

Mr. Cohen: It is not likely to happen that there would be a loss in this situation; but if there is, the loss cannot be taken advantage of.

Senator Lang: It seems to me it should cut both ways.

Senator Flynn: You can amend it again. You are bound to do that for years and years.

The Chairman: When the bill is being reprinted after the Senate has passed it, what do we do with the marginal note? It is not part of this statute; it is there for information. However, if it is not actually corrected we should take it out, should we not?

Mr. Cohen: Yes, sir. I will draw that to their attention.

Senator Flynn: It remains in the statute.

The Chairman: We do not need any amendment.

Senator Flynn: But it remains in the statute just the same.

The Chairman: We do not take it out.

Senator Connolly: It has to be corrected.

Senator Lang: I would leave it in there. It might affect the judge.'

The Chairman: The marginal note is not a direction to the court.

Senator Lang: But some judges can be persuaded it is.

The Chairman: There is always the court of appeal.

Senator Lang: That is what we like, too.

The Chairman: Shall clause 20 carry?

Hon. Senators: Carried.

The Chairman: We will decide about the marginal note. Now clause 21.

Mr. Cohen: This, again, is concerned with what a debtor may realize when he settles his debts. For example, if I borrow \$100 and I am able to settle that debt by repaying only \$90, in a sense I have a gain and some of that gain should be brought to tax. On the other hand, if I manage to settle the debt in circumstances where I am literally bankrupt, it is a settlement with my creditors because I am not solvent, and section 80 of the Income Tax Act has a special regime. The amendment before you in clause 21 is of a relieving nature. It ensures that the capital cost of the depreciable property, or the adjusted cost base of other capital property, will not be reduced a second time where a debt was extinguished or cancelled, giving rise to a gain in the debtors hands. It is a technical explanation. There was some concern that as the section was drafted it was working inappropriately and harshly on the taxpayer. The purport of the amendment is simply to clarify it and make sure that it is working properly.

Senator Lang: You could not collect it anyway.

Mr. Cohen: No, but we do not want to tax it; that was the problem.

The Chairman: Shall clause 21 carry?

Hon. Senators: Carried.

The Chairman: Clause 22 concerns the expropriation of foreign property.

Mr. Cohen: Yes, sir. This clause brings a new and very complex provision into the Income Tax Act. It is not applicable to many people, but to those concerned it is very important. It provides rules for determining the income of a taxpayer who has had a business carried on abroad expropriated by a foreign government. A number of Canadian corporations face this problem. Essentially, the clause permits the taxpayer to defer the recognition of income for tax purposes until such time as his investment has been recovered. That is the main purport of the clause. It is very complex in its detail.

Senator Hays: Out of his profits at home base?

Mr. Cohen: No, sir. If I have a business expropriated by a foreign government what they give me is paper, a lot of bonds. There is always a difficulty of first of all knowing how much those bonds are worth; and secondly whether I will collect on those bonds. What the clause is designed to do is not bring you to tax until you have recovered your investment.

Senator Hays: That particular investment?

Mr. Cohen: Yes, on that transaction alone.

Senator Connolly: Recovered it and brought it to Canada.

Senator Beaubien: You mean you have disposed of the bonds, you have been able to sell the bonds?

Mr. Cohen: If you have been able to sell the bonds that is a realization. However, very often these bonds are not assignable.

Senator Flynn: Let us experiment.

The Chairman: Even some of those bonds carry interest.

Mr. Cohen: Yes, sir.

The Chairman: The person whose property has been expropriated and has received those bonds is entitled to apply the interest in reduction of his capital.

Mr. Cohen: That is right, sir. The sequence is your investment capital, the capital gain, if any, and, last but not least, the interest, if any. You take the first dollars in and apply them in that sequence.

The Chairman: When you have got all that back and you start making any money, you come back into the act?

Mr. Cohen: That is right.

The Chairman: This is certainly a relieving clause in every sense of the word. Clause 22 runs from page 30 to page 40.

Senator Connolly: In a word, what does it mean?

Mr. Cohen: It helps.

Senator Flynn: They are trying to be fair.

The Chairman: Is there any detail in that part of it that is not included in the explanation you have given summarily, Mr. Cohen?

Mr. Cohen: No, sir. It is a very complex clause in working it out, but that is the substance of it.

The Chairman: As you have stated it here?

Mr. Cohen: Yes, sir.

The Chairman: Are you satisfied with the clause, honourable senators? Shall it carry?

Hon. Senators: Carried.

The Chairman: That takes us to clause 23.

Mr. Cohen: Clause 23(1) is a correction of the French version.

Clause 23(2) is an important relieving clause. It exempts from taxation various forms of income accruing on property awarded to a person under 21 years of age in respect of a personal injury.

The Honourable John N. Turner, Minister of Finance: I am sorry to be so late, Mr. Chairman. The delay was in the House of Commons.

Senator Connolly: You should say you were delayed in the other place.

Hon. Mr. Turner: This is the other place.

The Chairman: I was going to take the word "other" out. This is "the" place.

Hon. Mr. Turner: It is nice to be here anyway—for a visit.

The Chairman: Would you finish dealing with clause 23, Mr. Cohen?

Mr. Cohen: The best example is the thalidomide problem, where moneys have been put aside for children and held in trust until they come of age. The purpose of this clause is to exempt that income from tax. It is very much a relieving provision for these exceptional circumstances.

Senator Connolly: It is only because of those exceptional circumstances that this is done, and does it apply only to thalidomide children?

Mr. Cohen: No, sir. It is any award as a result of a personal injury. The problem was that very often these awards are not available to the child; they are held in a mandatory trust fund, and to tax that income as it accumulates in a trust fund—

Senator Connolly: Would that apply also to someone incapable and who perhaps would only have to draw a portion of the income? I mean a mentally or physically incapable person.

Mr. Cohen: The nature of the incapacity can be physical or mental, but it must be a fund that flowed out of an award. There must have been an accident or something.

The Chairman: The wording of the clause is:

... an award of, or pursuant to an action for, damages in respect of physical or mental injury to the taxpayer.

Senator Connolly: And the income from the fund is not taxable in the hands of the disabled person.

Mr. Cohen: Not until he has reached his majority.

Senator Flynn: What is the reasoning behind that? Somebody would be injured in an accident and would receive, say, \$200,000. I think that would mean an income of \$15,000 a year. That would not be taxable. What is the reasoning behind it?

Mr. Cohen: I suppose the reasoning is that there has to be a damage awarded here.

Senator Flynn: I agree.

Mr. Cohen: It is a matter that, more often than not, that is an award, and these awards are set on the basis of not taking into account the tax considerations. If you were assuming that the \$200,000 was going to generate \$10,000

or \$15,000 of income annually, and that a lot of that got taxed, you would have the case where the moneys available would not be as great as those which they thought would be available for the benefit of the child who suffered that injury.

The Chairman: There might be another consequence.

Senator Flynn: I have no objection to it, but—

The Chairman: Another consequence might be that instead of getting a judgment for \$200,000, if you said in court to the jury that they would have to increase this amount because this amount was going to be subject to tax, there would be greater penalties on the people being sued. It seems logical to exempt the income until the child is 21. After that, the child presumably is getting the award of \$200,000 because he is just as unhealthy after the age of 21.

Mr. Cohen: That is true, senator. It is an arbitrary line, but I suppose that line has to be drawn somewhere.

Senator Flynn: I have no objection, but I do not see the reasoning behind it.

The Chairman: In the case of anything that is relieving, we have no objection. Is the clause carried?

Hon. Senators: Carried.

The Chairman: Clause 23 is carried.

Now, Mr. Minister, we have you here and we know that you are under some pressure. Supposing we could stop at clause 23 for the moment, honourable senators, as we have some general questions we want to ask the minister and this would be the time to do it.

I can think right away of a recommendation that the Senator committee made, Mr. Minister, in connection with the construction industry, wherein there was a practice under which the construction people, if they had a contract running into a number of years, would make a return on the completed contract at the time they completed the contract. There was nothing in the statute over those years that permitted that to be done, but that was the practice. In following that practice, the income tax division said the company would have to include the total amount of the completed contract and they would not entitle the company to withhold from that any withholding taxes, any withholding amount of money, that they might need for purposes of making sure that all bills would be paid. The income tax division said that they might withhold for a while but that they would have to return income for the full amount of the contract when the contract was completed. There was nothing in the law. We suggested in our report that some time, somewhere, a question may be raised as to the authority for this. Some administrative official in the income tax division, in administering the law, may disallow a return on this basis. I was wondering whether there was any particular reason why this was not dealt with.

Hon. Mr. Turner: I would like to ask Mr. Cohen to describe some of the problems.

Mr. Cohen: Senator, if I may, subsequent to the time of your report, we met with representatives of the construction industry and reviewed the contract method. There

was not general agreement amongst everyone as to how exactly to codify these rules. It was agreed, with their co-operation, that we would have the Department of National Revenue issue an interpretation bulletin, which would give everyone a chance to look at the way these rules are operating, particularly in the construction industry itself. If that bulletin were satisfactory, we would then consider codifying on the basis of the bulletin, when the facts were known and we had had a chance to operate them.

I might mention that that bulletin was issued only in the last three weeks, and we will meet again with the construction industry after they have had a chance to work under these rules.

Senator Connolly: When you talk about codification, you mean incorporating whatever rules you would derive from that ruling into the statute?

Mr. Cohen: That is right, the completed contract method developed as an administrative practice, but there was nothing officially from the Department of National Revenue on that. What the association really wants is to get that administrative practice brought into the statute. We are quite content to do that, once we are satisfied that everybody knows exactly what is meant by the completed contract method.

Senator Lang: This is a very general question to the minister. There seems to be a belief held by some people, even in moderate income groups, and by those who have now completed their 1972 tax forms, that the rate of tax has gone up invisibly under the new tax system, as opposed to the pre-1971 system, probably in the bracket structures. I was wondering if the minister could give us, in any general way, a comparison as to the dollar volume of revenue generated, as of this date, from personal income taxes, as of this date, compared with as of, say, a year ago from this date, under the old system?

Hon. Mr. Turner: Mr. Chairman, we have not a comparison of what the revenue is under this system and what it would be under the old system. As a matter of fact, we have not a complete assessment yet of the revenue, of course, on the 1972 fiscal year. In terms of the increased revenue, it is due largely to two factors.

First, there is the very strong expansion of the economy, particularly in the fourth quarter of 1972 and through the first quarter of 1973. The second reason is that inflation compounds itself against the progressive tax system, and it brought in much higher revenues than were anticipated at the time of the reform. I venture to say that if you were to put those same factors against the pre-reform system, you would not have too much difference in revenue. In order to make sure that does not happen, there was a gradual reduction on the first \$500 through until 1976, a reduction of 17 per cent down to 6 per cent in the next three years. It is just an added assurance that the new system does not provoke more revenue than the old system.

I think it is fair to say that if you add the February budget to this situation, the tax return from Canadian citizens has again been reduced by \$1,300 million which, applied across the board, would be equivalent to a 12 to 13 per cent tax cut.

Compounded to that, there is the raising of the exemptions—single, from \$1,500 to \$1,600; married, \$2,850 to \$3,000, and so on. There is also the indexing system, proposed, which will ensure that the raising of tax rates will not result automatically from inflation boosting one income group into another tax bracket. When we add these figures conclusively, it might be interesting to project that against the old system. Here again, the increase in revenue is largely expansion in the economy and the effect of inflation.

The Chairman: Mr. Minister, may I interject this point? When the then Minister of Finance was before our committee, he was asked a question along that line. I think his statement was that, if you took all the tax provisions of Bill C-259 and followed them right down to 1976, you would find not an increase by 1976 but an actual reduction in the overall amount that would be collected.

Hon. Mr. Turner: Certainly, if you take that de-escalation on the first \$500, that would be true.

Senator Connolly: Are we talking only about personal taxes?

The Chairman: Yes.

Senator Connolly: Not about personal and corporate?

The Chairman: The then minister was talking about both.

Senator Connolly: What are you talking about now—both or personal only?

The Chairman: What the minister is now talking about, I take it, is the personal income tax, when answering Senator Lang.

Hon. Mr. Turner: I think the senator was talking about personal income tax.

Senator Lang: Yes.

Senator Flynn: I intend to put a question later on anyway, maybe in June, to see how many people have filed returns, because I would like to compare the actual number with the prediction of your predecessor, who said that the new system would exclude from the payment of income tax so many hundreds of thousands of people. I wonder whether events will prove this true.

Hon. Mr. Turner: It may not be proven true, Mr. Chairman, because inflation has brought a lot of other people back on to the income tax rolls. It would therefore be pretty difficult to make a calculation.

Senator Benidickson: There has also been an increase in the work force.

Senator Flynn: What you are suggesting is that adjustments and so on have not kept pace with inflation.

Hon. Mr. Turner: I am saying that part of the problem of trying to assess whether Mr. Benson's predictions to this committee were right or not would be having to ascertain how many people were brought back on to the income tax rolls because of inflation of incomes bringing them back into the brackets, how much would result from productivity putting them into higher salary ranges and how

much would result from the expansion of the economy. It would be pretty hard to calculate that for you.

Senator Flynn: I am quite sure that when you calculated your budget you took all these factors into account.

Hon. Mr. Turner: Well, I was not thinking about two years ago, I was thinking of tomorrow, senator.

The Chairman: Senator Sparrow, you had a question which we thought you should reserve until the minister was here.

Senator Sparrow: Thank you, Mr. Chairman.

In the transfer of farm property from father to son, there is now to be no tax attracted to that transfer, but there is no such provision for a family farm corporation. Would you explain to us the purpose of leaving the family farm corporation out of the amendment?

Hon. Mr. Turner: Basically, we must consider that what we have done here is to make an exception to the general rule of a deemed capital gain on death as it applies to the family farm. We did that for a number of reasons. First of all, we did it for sociological reasons. We wanted to preserve the family farm, making sure that one generation could pass it to another generation. In the second place, we did it because we believe agriculture and the production of agricultural produce—particularly when part of our problem in the cost of living is a shortage of supply—is a socio-economic fact which we want to promote. But this is an exception. The family farm was made an exception from this general rule in the February budget retroactive to January 1, 1972.

We extended it as well during the lifetime. The honourable senator knows that the tax-free transfer is now effective during the lifetime on the same condition, namely, that the farmland remains in active cultivation of agriculture and that the ownership remains in the family.

Senator Sparrow: Thank you.

Hon. Mr. Turner: Now, incorporation affects mostly large holdings. Incorporation was basically made for management of farms from a tax point of view or an estate planning point of view. Shares are easier to pass in part than farmland. Proper planning can allow the shares to be passed during the lifetime of the father to the children quite easily, and if I were to get into the tax-free transfer of incorporated family farms, then I would really be into the tax-free transfer of every business in this country—

Senator Lang: Hurrah!

Hon. Mr. Turner: —because it would be difficult to distinguish that. While we were dealing with land owned by people directly, then we had specific considerations that differentiated it from any other kind of business: first, the importance of family farming; second, the volatile nature of land; third, the high capitalization of the farm; and, fourth, the lack of liquidity. Now, these problems are much easier met if you break down the farm unit into a corporation and then transfer the shares over a lifetime. That is the reason we stopped short of that.

Senator Benidickson: Mr. Chairman, when we deal with changes in the Income Tax Act we are dealing only with taxpayers, but from the overall social aspect would the minister have any comment to make as to the percentage

of the working force or the percentage of people able to work, including unemployed, who are not personal income tax payers? Do you happen to know that percentage? And how many people are in the work force but earn too little, under our system of exemptions, to get any of what we are talking about here today in the way of benefits, reductions and things of that kind?

Hon. Mr. Turner: We could get that information for you, Mr. Chairman, and send it to the committee.

Senator Benidickson: Even if most of what is in this bill is of benefit or of relief advantage to the taxpaying portion of the population, the only way a government can help the others would be through social policies such as changing the family allowance and so on.

Hon. Mr. Turner: That is so.

Senator Benidickson: And by doing what you did in your budget when you relieved the amount of import taxes and sales taxes on certain commodities such as foods, children's clothing and the like.

Hon. Mr. Turner: Basically, it has to be done, as you say, through social policy, although we have in the budgets of May and February raised the basic old age pension, raised the guaranteed income supplement and escalated both against the cost of living.

Senator Benidickson: And helped students.

Hon. Mr. Turner: We have helped students, yes, but here again we have to have deductions against income, and you are talking about the people without income. By escalating the tax brackets and the exemptions we keep the lower level of taxability the same compared to the cost of living. So we have tried to use the tax system in that sense to keep the same marginal rates.

Senator Flynn: We got much more than we expected before the election, but, if the figures that you are going to give to Senator Benidickson are to be useful, they should cover the years 1969, 1970, 1971 and 1972. Would that be possible?

Hon. Mr. Turner: We might give them to you from 1957 and 1958 as well, senator. I would be glad to do that.

Hon. Senators: Hear, hear.

Senator Flynn: You can start from 1956, then.

Hon. Mr. Turner: I would be glad to give you the overall picture. I might say that the economic realities change. The economy is in a far higher growth cycle this spring than it was last spring, and, as the chairman said, we are expected to bring forth different economic policies to reflect different economic realities.

Senator Flynn: Political realities are economic realities, too, I suppose.

Hon. Mr. Turner: And vice versa.

Senator Benidickson: What would you consider the most practical basis for providing these figures? Would you consider that we should look at the eligible work force or the existing work force when we are relating it to non-taxpayers?

Hon. Mr. Turner: We will try to compile it on both assumptions, senator, and we will do it over a period of time which will show some useful trends.

Senator Connolly: Mr. Chairman, the last time we had the privilege of having the Minister of Finance here was when we had the tax reform law at the end of 1971. At that time the critical question before the committee was the position which was taken by the then minister, Mr. Benson, with reference to the suggested amendments proposed by this committee. Since that time there has been reconsideration given—which is what Mr. Benson promised this committee would be given—to about seven or nine different proposals for change. Would it be fair to ask the minister how many of those have now been dealt with, and, perhaps, what remains to be dealt with, or if those that have not been implemented cannot be?

Hon. Mr. Turner: I think that is a fair question, Mr. Chairman. It underlines some of the very useful work done by this committee in the review of the tax reform bill, and I think it might be useful for the country to know and for this place to understand what has happened to its suggestions. I can give you a list of amendments in this bill now before the committee, Bill C-170, which respond to the commitments made by Mr. Benson when he appeared before this committee.

Senator Flynn: In December, 1971.

Hon. Mr. Turner: In December, 1971. At that time Mr. Benson promised that—and I think his cryptic words were—"something would be done" in connection with several points that were raised by the Senate.

Now, what were the promised commitments? First of all, gifts of certain types of property to charities: In virtue of subclause 35(7) of this bill, C-170, the donor may value the gift between fair market value and zero.

Secondly, in-kind distributions from employees' profit-sharing plan: In virtue of subclause 49(2) of Bill C-170 the property is deemed to be disposed of by the plan for proceeds equal to cost amount to the trust. This means that no gain or loss in respect of the property is recognized in the hands of the beneficiary until it is disposed of by him.

Thirdly, there was an undertaking to deal with in-kind distributions from deferred profit-sharing plans. In virtue of clause 51 of this bill capital gains of a plan accrued after 1971 on in-specie distributions are not taken into account in computing the beneficiary's income until he disposes of the property.

Fourthly, implementation of foreign accrual property income, the FAPI. In virtue of clause 78 of this bill a further two-year delay is proposed for the starting date of the FAPI rules; and, indeed, I have given an undertaking to the country that I am looking at these rules very seriously indeed and hope to have an announcement before too long.

Fifthly, tax-exempt non-resident investors. In virtue of subclause 68(2) of this bill provision has been made for the Minister of National Revenue to issue a certificate of exemption to certain non-resident persons, who are exempt in the country of their residence, so that they will be exempt from withholding tax.

Sixthly, six-year instalments for certain deemed capital gains. By reason of clause 58 of this bill, in certain instances an increase in tax occasioned by deemed capital gains may be paid in six equal annual instalments. There was some concern on the part of this committee that immediate payment would place an undue burden on the taxpayer.

Seventhly, there is now an exemption from departure tax rules. If the committee will turn to clause 9 of the bill you will find that temporary residents of Canada who during a ten-year period are not resident in Canada for more than 36 months will be exempt from the departure tax rules. So, if you are not in the country for more than three years out of ten, those rules will not apply.

Now, Mr. Chairman, in addition to the foregoing, the Senate review of Bill C-259, as it was then, raised a number of points, and several of these points have been met by amendments proposed in Bill C-170, even though there was no commitment by Mr. Benson in respect of those matters raised by your committee. I have already dealt with the commitments.

The following is a list of several important amendments in Bill C-170 dealing with matters raised by this committee, but which were not the subject of undertakings by Mr. Benson in response to your questioning. They were, however, adopted by me.

Senator Benidickson: And not necessarily raised elsewhere?

Hon. Mr. Turner: Well, I can say that these amendments were prompted by recommendations of this committee.

First, deferral of capital gain on inter-generation transfer of farm property. I shall be talking about that later.

Second, inclusion in the definition of "principal residence" of property held under a lease. This is in the bill.

Third, refundable dividend tax account of an amalgamated corporation will include such accounts of predecessor corporations immediately before the amalgamation.

Fourth, the inclusion of debt obligations issued on June 18, 1971 in section 16. This is dealt with in clause 3 of this bill.

The Senate suggested a number of problems encountered in determining the cost of ineligible investments. Problems such as these led to the proposed repeal of the special tax on such investments. In other words, we eliminated that tax altogether. I think the tax conceptually had a lot of merit, but it turned out to be too complex. Every small businessman in the country had to spend a fortune on tax lawyers and accountants and I did not think it worth it, so I scrapped it. This committee was concerned about that.

I think that is a summary of some of the action that was either committed by my predecessor to this committee or was prompted by suggestions made by this committee.

Senator Connolly: Mr. Chairman, could I just follow up on that by saying this; I think that statement is a very important one for this committee. I am not too sure that the reporter got all of the words, and I wonder if the minister could supply a copy of the statement from which

he has read to the reporter so that we can be sure our record is right.

Hon. Mr. Turner: I certainly shall ensure that proper supporting documentation is given to the reporting services of the Senate.

Senator Connolly: I should also comment that it looks as if the minister came prepared for just such a question, because it is an accounting by him for an undertaking that was made over a year ago—indeed, a year and a half ago—because Mr. Benson gave us the same undertaking when he came before us when we were studying the bill even before we actually had it. Now, are there any outstanding items?

Hon. Mr. Turner: Mr. Chairman, I just wanted to say that I would never dare to come to this committee without being prepared.

Senator Connolly: I think the minister is well prepared wherever he is.

Senator Flynn: Well, you could take a risk and you could consult with Senator Connolly before.

Hon. Mr. Turner: I can say quite truthfully that I did not get tipped off, but I would have been disappointed if somebody had not put the question.

Senator Connolly: I think it is very important for this committee to have this record made, and I am delighted, as I am sure all the members of the committee are delighted, that the results of our inquiry have been so fruitful.

Mr. Chairman, the only other matter I want to raise is this. I think perhaps the minister could confirm my understanding that all these changes that have now been implemented will date back to the effective date of the original bill, January 1, 1972.

Hon. Mr. Turner: All these amendments that I have recited are retroactive to January 1, 1972, and will take effect as if the original recommendations of the Senate had immediately been enacted at the time of the bill.

Senator Connolly: I wish the press were here so that they would know what the effect of the Senate's work has been upon the taxpayer.

Hon. Mr. Turner: That is up to you, Mr. Chairman—to sell that.

Senator Hays: Mr. Chairman, may I ask the minister a question?

The Chairman: Certainly.

Senator Hays: In clause 6(1)(b) where we are talking about livestock and basic herds, I am wondering why we cannot include bull semen with livestock.

Hon. Mr. Turner: Maybe we are out of date.

Senator Hays: I think we are out of date. If I might make an explanation, Mr. Minister, 70 per cent of all dairy cattle in Canada, which number millions, and a big percentage of all dairy herds in Canada no longer keep bulls. They buy semen and, therefore, I think it should be included with livestock.

Hon. Mr. Turner: I understand that Mr. Cohen gave an undertaking that the department would look into it, and we will. One of the problems I found, Mr. Chairman, when I took over this portfolio was that there were not many people in the department or the Department of National Revenue who knew too much about what went on on the farm.

Senator Connolly: You come here and you'll find out!

Hon. Mr. Turner: So when I took over this portfolio, we set up—frankly, at the instance of Pat Mahoney, and it was a very good idea—an interdepartmental committee of Finance, National Revenue and Agriculture so that we could continue to examine, on an ongoing basis, the application of the Income Tax Act to the agricultural community to see that this law works down on the farm.

As a result of that, we received recommendations regarding the family farm, the taxation of quotas, the valuation of animals not in the basic herd, and so on, that are found in this particular bill. That will be an ongoing process, and I will raise the question asked by Senator Hays with that committee.

Senator Lang: It seems to me that the Department of Transport should be brought in, or is that too subtle? I was thinking of s-e-a-m-e-n!

Mr. Chairman, I am led to believe that some of the nightmarish qualities of this legislation came about because the drafters were under tremendous pressure to produce the results within a limited time frame. As a result we have, first of all, this tremendous amount of cross-referencing and, in my opinion, an inadequate breakdown by subject matter. Secondly, as the bill now stands there has been, as a result of what I mentioned, a distortion, almost a desecration of the English language to fit certain mathematical concepts. Would the minister consider referring this act to a committee of expert draftsmen somewhere, who might at their leisure, not under pressure, attempt over a period of years to redraft the whole act into a more understandable form?

I say this seriously, because in my opinion it is very important that our law, no matter on what subject, should be capable of being understood by an intelligent, well-informed layman, in addition to lawyers and chartered accountants. This is a long-term suggestion, but I think it is important that we attempt to put into English which will be generally understandable, at least, the basic concepts underlying the act. Those concepts are not too difficult to understand, but they are certainly not readily identifiable out of this piece of legislation. I do not know whether this is feasible, but I just put it forward.

Hon. Mr. Turner: I sympathize with the points taken by Senator Lang. A tax statute is not the easiest reading in the world in any country or language. It is obvious that this statute will take a good deal of time to digest, even by the accounting and legal professions. I have given an undertaking to the country and to both professions, through the Canadian Institute of Chartered Accountants and the Canadian Bar Association, that I will continue to move to take the rough edges off tax reform where I find them, where hardship results or is anticipated, where drafting irregularities appear which would unduly complicate the statute and where its results had not been contemplated by the draftsmen. We will continue to do

that. This also applies to cases in which Canadian business at home or abroad is prejudiced.

Now, in order to re-draft this statute we would have to reorganize some of the concepts. It is not just a word game; it is a concept game; and one cannot be severed from the other. I would be very reluctant to put this statute back in the mill.

Senator Lang: I am not suggesting that, but only the question of drafting.

Senator Connolly: Have the Canadian Tax Foundation, the Canadian Bar Association or the Canadian Institute of Chartered Accountants ever made a similar suggestion to that of Senator Lang?

Senator Benidickson: Is it in their interest?

Senator Connolly: I think it is in the interest of all.

Senator Flynn: Perhaps the suggestion put forward by Senator Lang should be considered in the light of the comments we heard from lawyers who appeared before the committee who had endeavoured to obtain information from the officials of the department and were not too happy. All lawyers expert in income tax legislation are on the same level now; no one knows. I do not know if expert draftsmen would be able to do the job proposed by Senator Lang.

[Translation]

The Hon. Mr. Turner: It is always a question of human nature. You know, the great experts, the old people always resist change because it puts youth in the same position. The same thing happened with the revision of the Civil Code of the Province of Quebec. All the procedural experts were opposed to it while all young lawyers were in favour. Why? To achieve equal opportunities.

Senator Flynn: At that time, I belonged to the youth group.

[English]

The Chairman: Are there other questions which senators wish to put to the minister?

Mr. Minister, it is not that we do not like your company—we do—but we have been getting along very well with Mr. Cohen, and he has been staying clear of any commitments on policy. The chairman, of course, will protect him in that regard.

Hon. Mr. Turner: Thank you, Mr. Chairman.

The Chairman: Unless there is an unforeseen development, we could continue with Mr. Cohen. We have now proceeded as far as section 30 of the bill, so we are moving along.

You did not mention one of our top priorities, the non-resident-owned investment corporations. They are not equated to a non-resident individual in the treatment you have accorded them.

Hon. Mr. Turner: By way of preamble, should the committee decide in its wisdom that it wishes me to return, I will be available. I am located in the West Block. That applies

to the companion pieces of legislation for 1972, Bills C-171 and C-172.

For investments in Canadian property the NRO effectively remains a conduit, or pipe—that is, its tax treatment is substantially the same as the treatment given non-residents. Thus capital gains on taxable Canadian property are taxed at 25 per cent to the NRO and gains on other Canadian property are exempt when realized. These gains may be distributed tax free to shareholders by way of a capital gains dividend. Interest, dividends and other categories of income are taxed at 25 per cent (15 per cent before 1976). When the earnings are distributed, the tax is refunded to the NRO and the dividend will attract the non-resident withholding tax of 15 per cent or 25 per cent depending on the treaty situation of the shareholder.

While these rules effectively provide a conduit treatment for Canadian investment, the NRO has always borne tax on foreign income. Such income would, of course, not bear Canadian tax if received directly by the foreign investor. Under the act as it now stands foreign income remains taxable in the same way as Canadian source income. Capital gains on foreign investments are not taxed when realized by the NRO, but would attract the non-resident withholding tax when distributed.

The shares of an NRO are treated for the purposes of the capital gains tax in the same manner as the shares of any other Canadian corporation. The shareholder will be taxed on any gain if the shares represent taxable Canadian property in this hands.

Senator Benidickson: While the minister is present, Mr. Chairman, would you permit a short question with respect to one of the other bills which was referred to us? We might then not require his presence further. This relates to the act to amend the Customs Tariff and the act to amend the Excise Tax Act. The amendments to the Customs Tariff, in the main, provide easier access to this country, without tariff barriers, for products from underdeveloped countries.

Hon. Mr. Turner: Right.

Senator Benidickson: Senator Connolly indicated that a certain number of countries had taken similar action.

Hon. Mr. Turner: Right.

Senator Benidickson: I wondered whether the United States was among those countries.

Hon. Mr. Turner: That is the only country which, aside from us, has not yet taken action.

Senator Benidickson: That was the answer to my question. Thank you.

Senator Grosart: I asked a question earlier today referring to the magnitude of the scope of the preferences now granted by us to the developing countries. I asked the question because of the exemptions appearing in the revised Customs Tariff Act, section 3(2). They appear on page 2 of the act as passed by the Commons. There was also the statement of the minister that it is the government's intention to exclude the preferential system at the outset, to limit the number of sensitive products, mainly textile products, and to exercise export restraint. My point is that the bill is not all that generous to developing

countries. Most of their manufactured and semi-manufactured products are now admitted free.

Would the minister tell us, firstly, what is the dollar volume of the exemptions compared to the present volume of imports? I think we have one figure of \$160 million. I would like to know what part that is of the total; and, particularly, what is the quality and nature of the respective exports which will still be under the old tariff rates and not under the preferential rates, (a) in view of the exemptions in the bill, and (b) the intention to exercise executive authority to proscribe other items.

Hon. Mr. Turner: I would like to ask Mr. Rod Grey, the Assistant Deputy Minister, to deal with that rather technical question.

Mr. Rodney de C. Grey, Assistant Deputy Minister, Department of Finance: Mr. Chairman, in the exclusions in the second part of the section, where there is a long list of tariff items, essentially what is excluded from the previous general provision are agricultural products, which are the subject of special preferential rates set out in the following pages.

Items omitted from the exclusions are the non-agricultural tariff headings which appear in what essentially are the food chapters of the Customs Tariff. This is probably a complicated way of drafting it, but it happened to be the shortest way.

By general international agreement each country put forward, on a completely unilateral basis, those tariff items covering agricultural products for which it was prepared to offer preferential rates.

The other items to be excluded, which are more of a safeguard action, are those textiles and other products where we have asked for, or have negotiated, export restraints by other countries. It seemed to us unreasonable, for example to ask the Government of Japan to restrain their exports and at the same time give a new tariff preference to some less developed country which would be competing with Japan in this market.

Senator Grosart: Is that not the whole purpose of the preferences, to give that preference to developing countries over the developed countries?

Mr. Grey: Not in those very special cases, senator. Imports from, say, Japan, or from other developed countries, not only face the tariff, but those countries are asked by us, under the threat of surtax action, to impose a quantitative restraint on their exports. It seemed unreasonable to contemplate that we would be increasing the discrimination against them, while at the same time asking them to deny themselves normal commercial opportunities in the Canadian market. I would think that our list of exclusions on that basis will be found to be shorter than that of any other industrialized country.

Senator Connolly: What was that again?

Mr. Grey: The point I was making, senator, was that our list of exclusions—

Senator Connolly: In Canada?

Mr. Grey: Yes—is shorter than that of other industrialized countries. I think that Japan and the EEC have held

out more products from their tariff preference scheme than we have.

Senator Grosart: The question I would like answered is what are the sensitive areas of exclusion from the point of view of, say, some developing countries with which we have had traditional trade? What are the items that they would object to now and say that we have not been generous enough? You used the word "sensitive." You are thinking of sensitive in your own terms, "sensitive," on our side. What items, in the agricultural, manufacturing or semi-manufacturing areas would they complain about? Some of us go to these countries and are faced with this question. May I say that I am now a constant reader of yours, and I congratulate you on your excellent study for the Canadian Economic Policy Committee. I read it a few weeks ago.

The Chairman: Will your answer be a long one?

Mr. Grey: No. On the agricultural side, the problem we faced were representations from those Commonwealth countries which are underdeveloped. They did not want us to extend preferences to competing imports from countries not in the Commonwealth.

Senator Grosart: Particularly the Caribbean.

Mr. Grey: That is one of the reasons why some agricultural products are not in the selective list of preferences.

Senator Grosart: What products, if I may ask?

Mr. Grey: I think the major one is rum.

Senator Hays: And whisky.

Mr. Grey: In the industrial sector, the main thing that we were excluding, that developing countries might be complaining of, are textile products. Unlike the United States, the competition in the Canadian market for textile products comes largely from East Asia, and we do not have special arrangements with very many of the developing countries. Colombia, Mexico and India are ones that we are concerned with. They are competitive with the Canadian market over a very narrow range, primarily because our market has been open to Japan for a longer period than have the markets of Europe.

The Chairman: We must get back to the bill.

Senator Grosart: I know that the minister wishes to get away. My final question is: Developing countries see a conflict between the preferential system we offer and the action we take in connection with VER. How many countries are involved? I think about seven or eight.

Mr. Grey: You are referring to so-called voluntary export restraints. The weight of those are there with Japan, Taiwan, Hong Kong, and South Korea. Proportionately, we have used this system less with developing countries in Latin America. The scope of the voluntary export restraint on those developing countries to which we will now be extending the preferences is quite minimal.

The Chairman: Mr. Minister, as I said before, as much as we enjoy your company, we will let you go about your other duties. Should we again need your help, we will call upon you. Mr. Cohen has been getting along very well, and we will now continue with him. I understand there are no more general questions, which was the purpose of

inviting you here. I do not see that any other questions can arise in the rest of the bill, but if there are we might need to yell for help.

Thank you for coming, Mr. Minister.

Hon. Mr. Turner: Thank you, Mr. Chairman; and I want to thank the members of the committee for their usual courtesy.

Senator Connolly: Mr. Chairman, with reference to Bill C-172, will the committee be dealing with that bill in any greater detail than has already been done? I am wondering whether we will need Mr. Grey or the other officials for our consideration of that bill when we reach it.

The Chairman: Let me put it this way, Senator Connolly: Bill C-172 will be considered after we have dealt with Bill C-170. At that time I will put you in the position where you can give your own answer to that question, by asking you to take over the chair while we are considering that bill.

Senator Connolly: I am very flattered, Mr. Chairman, but I am afraid I may not be able to do that.

The Chairman: In any event, we cannot say "yes" or "no" at this point.

Senator Connolly: I may ask Senator Beaubien or Senator Lang to take the chair in that event, Mr. Chairman.

The Chairman: We will now get back to Bill C-170.

Senator Connolly: Do you want Mr. Grey to wait?

The Chairman: Well, I think someone from the department should be here.

Senator Benidickson: Is there any likelihood that we can complete our consideration of Bill C-170 and get to these other bills before 6 o'clock? We are now only about one-third of the way through it.

The Chairman: I think we can move along fairly quickly on the rest of it. I hope we will be through by 6 o'clock.

No words are being wasted, Mr. Cohen. We are now at clause 24.

Mr. Cohen: Clause 24 concerns itself with the distribution of pre-1972 special surplus accounts. This is a relieving provision which is designed to make it easier for corporations to make use of the special dividend procedures under section 83(1) of the Income Tax Act.

Senator Lang: That clause does not relieve the section where you get the 100 per cent penalty, does it?

Mr. Cohen: It does not eliminate it. That so-called 100 per cent tax is still there. This clause is designed to make the operation such that people will not run into that 100 per cent tax as frequently as they might have previously. This is very much a relieving provision to help corporations avoid running into that tax. If a corporation deliberately puts itself into that position, then that tax is still applicable.

The Chairman: But there is a period of 90 days before the minister makes his determination, is there not?

Mr. Cohen: That is correct, Mr. Chairman.

Senator Lang: Is that dealt with in clause 24?

Mr. Cohen: It is partially dealt with in clause 24 and partially in a later clause, the number of which escapes me at the moment.

The Chairman: Shall clause 24 carry?

Hon. Senators: Carried.

The Chairman: We now come to clause 25.

Mr. Cohen: Clause 25 envisages an extension to the so-called rollover rules in transferring property to corporations. It now will permit a resource property—that is, a mineral property or oil and gas rights—to be transferred to a corporation without running into any forced realized capital gain. In that sense it is a relieving provision.

The Chairman: Clause 25(3) deals with the transfer of partnership property.

Mr. Cohen: That follows from clause 25(1) and (2), which deal with transfers by individuals and clause 25(3) deals with the transfer from a partnership to a corporation.

The Chairman: Shall clause 25 carry?

Hon. Senators: Carried.

The Chairman: Next is clause 26, on page 45 of the bill.

Mr. Cohen: Clause 26, again, is a relieving provision. It deals with what is called cumulative deduction account. It prevents a new corporation formed by statutory amalgamation from being denied access to the small business deduction; that is, the 25 per cent taxation rate on the first \$50,000 of income in the first taxation year of the amalgamated company. There was a technical problem in the drafting which denied the amalgamated company in its first year the opportunity to take advantage of the small business deduction. This amendment is designed to clear that up.

The Chairman: Shall clause 26 carry?

Hon. Senators: Carried.

The Chairman: We now move to clause 27.

Mr. Cohen: Clause 27, again, concerns itself with the distribution of special surpluses. This amendment is designed to deal with the problems which arise on liquidation or the winding up of a corporation. Again, by and large, this is a relieving provision and is designed to make the rules work better and more easily, and more manageable when a corporation is wound up. There are a number of technical aspects to it, but that is the substance of it.

Senator Lang: What was the problem which this is meant to alleviate?

Mr. Cohen: It was really multifold, senator. One was with respect to when the corporation's fiscal year ended in the instance of liquidation; and another was that there was no sale from the corporation to the shareholders on winding up. If there was a deemed realization, the rules did not fit properly. These rules are designed to overcome those obstacles.

Senator Lang: It seems to me the Income Tax Act as it stands now is perfectly clear in this respect. I do not see why we have to get into this type of thing.

Mr. Cohen: It is the capital gains coming out of the corporation that poses the problem.

The Chairman: Otherwise, you would not have a problem.

Shall clause 27 carry?

Hon. Senators: Carried.

The Chairman: Clause 28, on page 50.

Mr. Cohen: Clause 28 will permit a newly formed corporation to elect to be a public corporation from the date of its incorporation, provided it meets the prescribed conditions, before it is required to file a tax return for its first taxation year. In effect, this gives a newly formed corporation time to get onside and meet the qualifications so that it can be a public corporation for the whole of its first taxation year.

The Chairman: So that if it gets onside at any time during the first taxation year, it can be treated as though it had been onside for the whole year?

Mr. Cohen: Exactly, Mr. Chairman.

The Chairman: And that is not possible under the present law?

Mr. Cohen: No, Mr. Chairman. Under the present Income Tax Act you have to meet the test throughout the whole of the year, so that if it is a newly formed corporation it is virtually impossible to meet the test.

Senator Beaubien: This permits a private company to become a public company?

Mr. Cohen: That is correct, senator.

Senator Beaubien: What are the requirements for qualifying as a public company?

Mr. Cohen: Generally speaking, senator, the requirements are that you have to have a minimum number of shareholders, depending on whether they are holders of common shares or preferred shares, and you have to have gone through, if I may use the term, a public distribution. You cannot simply be a private company with a lot of shareholders; you have to offer your shares to the public. If a corporation is listed on the stock exchange, it is automatically a public corporation.

The Chairman: Shall clause 28 carry?

Hon. Senators: Carried.

The Chairman: Next is clause 29.

Mr. Cohen: Clause 29 concerns itself with the criteria for qualifying as a foreign affiliate. The rule was that the Canadian shareholder had to have at least a 10 per cent interest in the foreign company in order to qualify it as a foreign affiliate. This clause reduces that minimum from 10 to 5 per cent on an elective basis. This clause, when adopted, would permit a few additional companies who have less than 10 per cent interest in a foreign corporation to qualify it as a foreign affiliate, if they so choose.

The Chairman: Shall clause 29 carry?

Hon. Senators: Carried.

The Chairman: Next is clause 30.

Mr. Cohen: This is a technical correction with respect to a problem dealing with partnerships. The purpose of this clause is to clarify that the special elections available to taxpayers in the computation of income are also available to members of partnerships in the computation of their partnership incomes. Such election has to be made by a partner on behalf of all members of the partnership.

The Chairman: So many times in this bill and in the Income Tax Act itself you use the word "elect" or "election". What discretion, if any, is there going to be in the administration of this?

Mr. Cohen: Very little, Mr. Chairman. This term really means two things. First of all, it means that you have to meet the criteria which are normally spelled out, either in the statute or, occasionally, in the regulations; and, secondly, you normally have to elect in a prescribed manner, which means filling out the prescribed forms.

The Chairman: That is not quite what I meant. If there is a time factor in the election, is there going to be any leeway, or will the door be shut if you miss by a day?

Mr. Cohen: Well, I am not responsible for the administration of the statute. Normally, we provide in the regulations what the prescribed time period is. I suppose if you are not within the prescribed time period, you are out of luck.

The Chairman: Ordinarily, but in the regulations there might be some discretion.

Mr. Cohen: Normally, I think the Department of National Revenue is quite flexible . . .

The Chairman: Well, I have no comment!

Shall clause 30 carry?

Hon. Senators: Carried.

The Chairman: Clause 31.

Mr. Cohen: This is a technical amendment concerning the taxation of trusts.

The Chairman: Clause 31 deals with the French language.

Mr. Cohen: Subsection (1) is a correction of the French language. Subsection (2) deals with the computation of income of a trust. It is really designed to make sure the income is not taxed twice.

The Chairman: We can certainly carry that without any difficulty.

Hon. Senators: Carried.

The Chairman: Clause 32.

Mr. Cohen: These again are technical amendments pertaining to the change in policy. They reflect little or no change in policy. My comments here are really applicable to both clauses 32 and 33. I do not know whether you want to get into the detail of them all. They are really technical amendments designed to make these rules make more appropriate.

Senator Lang: I would like to know what the problems are. I am not trying to get a free legal refresher course.

The Chairman: There must be problems that made you make these changes. Without going into a lot of detail, what was the problem? Was it that the rules were not working?

Mr. Cohen: The most difficult problem was that of "partial satisfaction." Let me explain what that means. The basic philosophy was that if you were the beneficiary of a trust and the property was distributed out of the trust, it was designed to be what we would call a rollover situation and there would be no realization of capital gains. The most severe problem that we encountered arose in cases where instead of having the whole of your interest redeemed in exchange for the property out of the trust you got only part of your interest redeemed. For example, suppose a will creating a trust and providing for the payment of the capital property to a son, one half of it when he attains the age of 25 and one half when he attains the age of 30. When the child turned 25 he would get a partial satisfaction of his interest in the trust and, as the bill was previously drafted, that was going to occasion a capital gains tax. It was not meant to. The most important change here is to make sure that there is a rollover in that situation, in this partial distribution. That is the kind of problem.

Senator Lang: When does he get the whole tax?

Mr. Cohen: He never pays tax until he in fact disposes of the property.

The Chairman: Shall that clause carry?

Hon. Senators: Carried.

The Chairman: You said that clause 33 belongs in the same category.

Mr. Cohen: Yes, sir. The changes in clause 33 are really of the same generic nature as those in clause 32, and I have spoken to both of them.

The Chairman: The changes are of the same nature. It is really the words "any capital interest or part thereof".

Mr. Cohen: That is the change, the "part thereof".

The Chairman: The "part thereof"?

Mr. Cohen: That is right.

The Chairman: Shall clause 33 carry?

Hon. Senators: Carried.

The Chairman: We do not spend too much time where it is relieving, such as that. That takes us to clause 34.

Mr. Cohen: I think this clause speaks for itself.

The Chairman: This carries quite easily. That is the over-65.

Mr. Cohen: That is right.

Senator Benidickson: This is the one from which refunds on paid tax are expected.

The Chairman: No. Clause 34 deals with extending the allowance to people over 65, from \$650, I think it is, to \$1,000.

Senator Benidickson: Somebody referred to it yesterday. It was not \$650 for long. It used to be \$500.

The Chairman: Yes. The only answer I would make is, whether it be \$500 or \$650, the big and real question is that when this bill becomes law it is \$1,000. Whatever it moved up from does not give me that much concern. Shall that clause carry?

Hon. Senators: Carried.

The Chairman: Clause 35.

Mr. Cohen: Clause 35 involves two additions to the type of expenditures that will qualify as medical expenses.

The Chairman: I do not think we need waste much time on this.

Senator Connolly: You dealt with that last night.

The Chairman: We dealt with that last night.

Senator Connolly: It is the full-time paid attendant.

The Chairman: The full-time paid attendant, yes. We went into that pretty fully. I think we can pass that without your help, Mr. Cohen.

Senator Benidickson: The only thing is that there has to be certification as to the necessity of it from a medical person.

Mr. Cohen: That is correct.

Senator Benidickson: That was not mentioned last night.

The Chairman: As part of that, on page 62 it deals with the blind person and persons confined to a bed or wheelchair. There you have the \$1,000 allowance. Then you have the transportation problem.

Mr. Cohen: That is correct. That is the cause of the amendment.

The Chairman: The amendment, Senator Benidickson, will be at the bottom of page 63 of the bill as passed; it will be the paragraph you see beginning: "(1.1)". That is where transportation services are not available. There was some extension given as to providing the remuneration, and I think even some relative, if they had a car, could drive the person to where they could get medical services. Certainly, I would say those provisions are so beneficial that we will not hesitate very long on them.

Senator Benidickson: The benefits, of course, apply, do they not, only if the distance is 25 miles for greater.

The Chairman: Yes, that is right. On page 64 it deals with the gift. This was one of our top priority items, which you have dealt with completely. If a man gives a gift of some property in-specie of some kind or other and it is useful to the organization or institution to which he gives it, if that institution ultimately disposes of it at a gain, under the original act I think the donor was going to run into capital gains tax.

Senator Connolly: Or his estate.

Mr. Cohen: The donor would have run into capital gains tax at the time of the gift.

The Chairman: That is right. We were concerned about his estate. There might be the incidence of tax after he died, in his estate.

Mr. Cohen: I think that is correct, senator, if what you mean is that he made a gift in his will.

Senator Benidickson: Let me understand this. Suppose somebody disposes of a painting; it is given to an institution to which the public has access, and is for public benefit. Does he pay capital gains on the difference between the current value and his cost, if it is a charity?

Mr. Cohen: It is easier for me to answer that question if I get a little more specific about the particular institution. If it is a gift of a painting to a public art gallery, there is no deemed realization. On the other hand if there was a gift of portfolio securities to a public art gallery with the intent that the securities could be sold and the proceeds used, perhaps to buy paintings, any accrued gain on that stock would be subject to the deemed realization. The test here is whether the gift is to an institution which can be reasonably expected to use the property as part of the operations of the institution. It might be a painting to a gallery—

Senator Benidickson: Which they could dispose of and use the proceeds for the benefit of their charitable operation.

Mr. Cohen: They are free to dispose of it; there is no string attached. It has to be to an institution which can reasonably be expected to keep it and use it. That is why I talked about a painting to a gallery, a piece of land to a boys' camp looking for a site, that kind of thing. There is no string attached, once the issue is settled at the time the gift is made.

Senator Benidickson: I can remember we had the representative of some charitable organizations before us when I was here, and I cannot remember what brought about their plight in that case.

The Chairman: The Montreal museum was represented here at one hearing before us and their plight was the risk that a donor takes if he donates something to an institution and at some subsequent period of time they dispose of it. I think the incidence of the tax was going to go back to the donor. Didn't Bill C-259 make some provision for that?

Mr. Cohen: No, sir. It would come in for tax at the time of the gift, regardless of whatever happened.

Senator Benidickson: The position of the charitable organization was that they were in some plight about this particular problem.

The Chairman: Yes, there was a plight, and we made a recommendation.

Mr. Cohen: I think the minister has answered the recommendation, but perhaps the truth of the matter is that he has answered it in part; he has dealt with part of the problem. Certain problems still remain. It is the difference between a piece of property intended to be used by the charity in its operations, as opposed, by way of illustration, to stocks and bonds, which obviously are not

intended to be used but simply the value of them once converted into money.

Senator Lang: What if I give my collection of paintings to an art gallery, and borrow them back for the rest of my life? I think this is done. Is that accepted as being to be used by them?

Mr. Cohen: It is not intended to be used in that fashion.

Senator Lang: The art itself is a type of thing that is normally to be used by an art gallery. It does not say when.

Mr. Cohen: The answer to your question is that if you give your paintings to the art gallery there is no deemed realization. If you borrow them back the next day, the Department of National Revenue may be very apt to say it was a gift in the first place. But that is a matter of particular interpretation of the facts.

Senator Lang: That is the way I think it should be left. Do not put all this in the statute.

The Chairman: The recommendation we made on gifts, bequests and devises was this:

... where capital property is transferred to a charitable organization or other similar tax-exempt organization by way of gift, bequests or devise, the taxpayer should be considered to have disposed of the property for an amount equal to the "cost amount" thereof to him.

Senator Benidickson: This would eliminate the capital gains.

The Chairman: At the cost amount.

Mr. Cohen: This amendment deals with that, though in respect of certain kinds of property only.

The Chairman: I realize that, but we are in agreement now. I think the limitation was advisable. You have put that limitation in there so as to avoid any abuses. We were looking at this to see how you people might look at it if you had a broad exemption.

Mr. Cohen: That is correct.

Senator Lang: You can control this problem by control of the use of the deductions at the other end. The only difference to the tax department is that you are going to take it as a receipt and set it off against income.

Mr. Cohen: That is exactly the point we are controlling. There are no strings attached once the gift is clear. There is nothing in the statute which looks beyond the date of the gift and says that three years later the charity is converted. There is no string attached here.

The Chairman: Whatever the problem was, it has been dealt with. Is the section carried?

Hon. Senators: Carried.

The Chairman: On page 63, as part of that clause 35, there was a point dealing with students. We carried that, the educational provision. Then, the gifts of tangible property, we have carried that.

Senator Lang: I see that students have to be ten hours a week in the university. That is an awful lot of university courses, ten hours a week, right now.

Mr. Cohen: I suppose ten hours is partially arbitrary, designed to distinguish between a full-time student and a part-time student. It is our information that most who have a ten-hour curriculum, it is pretty well more or less within the requirement.

Senator Lang: Ten hours a week is a lot; you would not believe it.

Mr. Cohen: They may not attend ten hours a week, but I think the course would set that out, that they should be there.

An hon. Senator: That makes how many weeks a year?

Mr. Cohen: It is on a monthly basis.

The Chairman: We turn now to clause 36, on page 67. What have you to say about that, Mr. Cohen?

Mr. Cohen: Clause 36 deals with the taxation of what are called part-time residents. This is a person who comes to Canada in the middle of the year or who leaves Canada in the middle of the year. The bulk of the changes are technical and deal with some of the anomalies that arose out of Bill C-259.

The Chairman: We are getting very much into the use of the word "anomalies" to explain a lot of circumstances. What underlines the use of the word "anomalies"? What were the anomalies?

Mr. Cohen: It is a question where, under the rules, it did not seem to work out.

The Chairman: In which direction?

Mr. Cohen: These are relieving. By and large, the bill is a relieving one.

The Chairman: Yes.

Mr. Cohen: This clause cuts both ways, but on balance it is a relieving one.

The Chairman: Whom does it affect?

Senator Connolly: I think Senator Lang's example was one.

Senator Lang: Our main concern is that we did not inhibit the movement of employees of companies operating in various countries, in Canada.

Mr. Cohen: This section does not deal with that. That problem was dealt with by the method the minister mentioned, by the change in the departure tax rule, saying that if you are here for less than three years over a ten year period the departure tax rule does not apply. That is what is causing the problem, with the mobile executive who comes into Canada for a short period of time. This section is a carry forward of a provision that has been in the statute for a long period of time, dealing with how you tax an individual who comes into Canada during a year and stays on as a permanent resident or who leaves in June and ceases to be a permanent resident of Canada. How do you deal with the first six months of the year? He is a part-time resident.

Senator Connolly: Has the old rule about 183 days residence gone out the window?

Mr. Cohen: That is still in our treaties and still in our statute. If he would have more than 183 days in Canada, he is deemed to be a resident. That is still in the statute.

Senator Lang: What part of this is not relieving?

Mr. Cohen: I would have to call on some assistance, if you want the explanation. Perhaps we should deal with sections 36 and 37 together. I wish to introduce to you Mr. R. A. Short.

Mr. R. A. Short, Director, International Tax Policy Division, Department of Finance: Honourable senators, if I may speak to that one point, section 115 is the subject of the next clause. It deals with a person who is a non-resident throughout an entire year, and it makes reference to a person who, in a previous year, had been resident in Canada. A part-time resident, a person who during the course of the year leaves Canada, is taxed on the portion of the year when he was resident in Canada, under the general scheme as it applies to all residents, and for the portion of the year in which he was a non-resident he is taxed under the general rules applicable to non-residents.

We have imported section 115 into the section 114 rules relating to part-time residents. The particular reference in section 115 to a person who had in a previous year ceased to be a resident in Canada did not make any sense in the context of section 114 which deals with a person who had left Canada in that year. For this purpose we had to add the words that you will see referred to in clause 36, (section 114.1), "who has, in the year, or had, in any previous year". So that is the change to try to make the rules appropriate for the part-time resident.

Senator Lang: So a non-resident who is non-resident for a whole year can be taxed on his Canadian income if he was a resident for part of the preceding year.

The Chairman: And on the income he has in the period when he was resident in Canada during the year.

Mr. Short: In the period during which he was non-resident he would be taxed provided the income of course is from a Canadian source.

The Chairman: The situation I am thinking of is that of a resident of Canada who follows the sun for some period of time. If he follows the sun for 183 days and then comes back to Canada is he affected by this section?

Mr. Short: Ordinarily not, if he maintains his home, his family and his affiliations, because then, basically, he is resident in Canada. The fact that he is temporarily outside of the country for more than 183 days does not matter.

The Chairman: I realize that. He has to completely disassociate himself from Canada in order to lose his residential status for tax purposes, but what I am trying to understand is, having that basic rule, how do you deal with the situation where I am a non-resident for part of the year and a resident for the rest of the year? If I were in Canada for 182 days and I destroyed every tangible bit of evidence that might identify me with Canada, then in those circumstances would you say that this section applied to the period I was non-resident? Say I had

severed my affiliations. I am trying to understand how you can make sense out of our general rule as to who is a resident and what he has to do in order to lose that resident status, as against this language of resident part of the time and non-resident part of the time.

Mr. Cohen: Senator, perhaps we are mixing two things up here. This rule really deals with a once and a once only type of situation. It is a situation where you have come to Canada or you have left Canada in the middle of the year, and we have to look at what happened before you came and what happened after you left. Those are two different things. It is not an annual repetitive thing. You are talking of a situation where somebody is out of the country for four months every year because he is following the sun; he is wintering in the south. That individual undoubtedly is a resident in Canada for the whole year, and this section does not apply. It is not relevant because he is a Canadian resident.

The Chairman: If a non-resident, who comes to Canada for part of a year, has any Canadian sources of income during that period, is he subject to tax on that Canadian income?

Mr. Cohen: I think that is correct.

Mr. Short: For the period of the year which he was non-resident he will be taxed by Canada as a non-resident. In other words, he will only be taxed on any income he earned from sources in Canada, but when he becomes resident in Canada he will then be taxed on his world income, as is every other person resident in Canada.

The Chairman: Okay.

Senator Lang: Is that Canadian tax at the 15 per cent withholding rate?

Mr. Short: No. These rates do not apply to income from business or employment. The taxation of a non-resident on income such as dividends, interest, royalties and so on is subject to the non-resident withholding tax under an entirely separate part of the act.

Senator Lang: In other words, he is taxed at the full rate on his Canadian income, even though he is not a resident?

Mr. Short: On his Canadian-source business and employment income, yes.

The Chairman: What is his marginal rate? The marginal rate for Canadian-source income or his whole income?

Mr. Short: His Canadian-source income.

The Chairman: Do clauses 36 and 37 carry?

Hon. Senators: Carried.

Senator Connolly: Were you intending to finish this bill this evening, Mr. Chairman, or were you contemplating adjourning until tomorrow?

The Chairman: I was contemplating that we would finish this bill, if at all possible, before six o'clock. I was hoping that if we could get this consideration through now we might be in a position to report the bill. Can we continue now?

Senator Hays: Yes, let's get on with it.

The Chairman: Clause 38, Mr. Cohen.

Mr. Cohen: Clause 38 concerns the disposition by a non-resident of what we call taxable Canadian property. There is a whole set of amendments to the rules to make these rules work a little better.

The Chairman: We were all through the original provisions which we criticized, I think.

Senator Lang: What was the problem?

The Chairman: It was simply the procedures that had to be followed where a non-resident was disposing of Canadian land, and I believe Canadian securities, too.

Mr. Cohen: If he had substantial interests.

Senator Lang: What was the problem, or perhaps I should ask what was the loophole?

Mr. Cohen: It was not a question of a loophole; on the contrary, the rules were too tough.

The Chairman: The requirements to complete a sale were too stringent. It made the position of the purchaser too difficult.

Mr. Cohen: That is correct, and these provisions are relieving provisions.

Senator Lang: Does that mean we no longer have to get that silly affidavit?

Mr. Cohen: Oh, yes, you need the affidavit, but these rules make it easier to get it.

The Chairman: And the affidavit is not as silly as it was before—let's put it that way.

That takes us right through to page 71, I believe. Does clause 38 carry?

Hon. Senators: Carried.

The Chairman: Mr. Cohen, clause 39 deals with foreign tax deductions.

Mr. Cohen: That is correct, sir. The most important change here is that it is now recognized as a credit as opposed to a deduction when the tax is paid to a foreign state. It used to be dealt with as a deduction—

I apologize; that is not accurate. Clause 39 is essentially a technical amendment to clarify the formula under which the foreign tax credit is computed.

The Chairman: Does clause 39 carry?

Hon. Senators: Carried.

The Chairman: And now we move to clause 40 on page 76.

Mr. Cohen: This is a purely technical correction of the draft.

The Chairman: Any questions on that?

Shall it carry?

Hon. Senators: Carried.

The Chairman: Then, clause 41.

Mr. Cohen: It is the same kind of provision as far as mutual funds are concerned as I described for public corporations. If you are starting up a new mutual fund trust, this gives you time to get on side.

The Chairman: Carried?

Hon. Senators: Carried.

The Chairman: Clause 42.

Mr. Cohen: This is about non-resident owned investment corporations. I think the minister spoke to this.

The Chairman: He indicated in the statement he made, and which you are going to supply to the reporter, the treatment that had been given in the bill, and I am sure that the committee recalls that. Even though we say yes, and carry it, that does not mean that at some stage we may not think there should be something more than that.

Shall clause 42 carry?

Hon. Senators: Carried.

The Chairman: Clause 43 is also concerned with NRO?

Mr. Cohen: That is correct.

The Chairman: We had the minister's statement, so we need not dwell further on that. Shall clause 43 carry?

Hon. Senators: Carried.

The Chairman: Then, clause 44.

Mr. Cohen: This is a relieving provision in connection with dividends paid by co-operatives. We have a basic 15 per cent withholding tax, and this now provides that where the recipient of that is an exempt taxpayer, the co-op is excused from deducting that 15 per cent. The old rule meant that the co-op deducted the 15 per cent, and then the recipient got it back.

The Chairman: I am glad they show more sense on this than they do with the Canada Pension Plan. They make the deductions, and then you have to claim them back. You may not even be eligible for the plan, but they still make the deductions and you have to claim them back.

Shall clause 44 carry?

Hon. Senators: Carried.

The Chairman: Clause 45.

Mr. Cohen: This is purely consequential, as a result of the elimination of the ineligible investments tax.

The Chairman: Shall the clause carry?

Hon. Senators: Carried.

The Chairman: Clause 46.

Mr. Cohen: The same explanation insofar as credit unions are concerned.

The Chairman: Shall it carry?

Hon. Senators: Carried.

The Chairman: Clause 47.

Mr. Cohen: This concerns taxation of insurance corporations. They are mainly of a technical nature. They make it clear that the provisions apply not just—this is going to be complex—for the purposes of computing the business income of a corporation but generally for computing the income of the corporation from any source, be it business, property or otherwise.

The Chairman: This really deals with the section in the Income Tax Act which preceded Bill C-259, which originally made out the conditions for taxation of life insurance companies, and you are making some changes now.

Mr. Cohen: That is correct, sir.

The Chairman: Mr. Benson, when he was before us, said it was time for some changes.

The next question, having got that far, is: Are the changes of a beneficial nature to the companies?

Mr. Cohen: I think, on balance, the answer is yes, because most of them have been discussed with representatives of the insurance industry.

The Chairman: Shall it carry?

Hon. Senators: Carried.

The Chairman: I think we had some insurance people before us last fall, and at that time it was indicated that discussions were going on.

Clause 49.

Mr. Cohen: Clause 49 is the provision which is of great interest to this committee. This is the roll-out of securities from an employees' profit-sharing plan.

The Chairman: That is right, and we certainly carry that one. Is it carried?

Hon. Senators: Carried.

The Chairman: That brings us to clause 50 on page 88. There is one in here that deals with deferred profit-sharing plans. Which one is that?

Mr. Cohen: That comes later. I am not sure where it is coming, but I know it is coming.

The Chairman: You have "earned income" in here, so what is the purpose of this?

Mr. Cohen: This is a relieving amendment which affects the amount you can contribute to a registered retirement savings plan. Without going into the mechanics of it, the effective definition as it previously read was that instead of being able to contribute 20 per cent of your earned income, you could only contribute about 16²/₃ per cent, and this restores it to what was always intended, the 20 per cent.

The Chairman: At page 89 they talk about refunds of premiums to estates.

Mr. Cohen: That is a second relieving amendment, sir. There was concern that if an individual died and left the proceeds of the registered retirement savings plan to his spouse, the spouse could not put it into her registered plan. If it went through a will, it lost its quality; this amendment preserves the character of the refund if it moves through a will and out to the spouse.

The Chairman: If she took it and re-invested it in another registered retirement savings plan, then it certainly would not flow.

Mr. Cohen: That is right, sir.

Senator Lang: These do not attract tax during their existence?

Mr. Cohen: The plans themselves are exempt.

The Chairman: Shall clause 50 carry?

Hon. Senators: Carried.

The Chairman: Now we come to clause 51.

Mr. Cohen: This is the roll-out of securities from a deferred profit-sharing plan.

The Chairman: Since this does what we recommended, I should think it should be carried.

Shall it carry?

Hon. Senators: Carried.

The Chairman: Then, clause 52 on page 95.

Mr. Cohen: This also concerns taxation of the insurance industry.

The Chairman: This is something that I think we recommended.

Mr. Cohen: I believe that is correct, sir.

The Chairman: As a matter of fact, I have notes on it here. It is beneficial in the sense, I think, that it was transferring any capital gain from a life company on an investment in segregated funds.

Mr. Cohen: Yes, it concerns segregated funds.

The Chairman: And carries them back to the policyholder.

Shall the clause carry?

Hon. Senators: Carried.

The Chairman: What about clause 53?

Mr. Cohen: Clause 53 simply changes the word "or" to "and".

The Chairman: Shall it carry?

Hon. Senators: Carried.

The Chairman: You know, we might have a general law to say that wherever the word "and" is used, you may, if necessary, substitute the word "or".

Then we come to clause 54 dealing with farmers and fishermen.

Mr. Cohen: This is a relieving provision to simplify the way farmers and fishermen report their tax on an instalment basis.

The Chairman: I think it is pretty clear. I read it and I though I understood it, so it must be all right.

Shall it carry?

Hon. Senators: Carried.

The Chairman: Then, clause 55.

Mr. Cohen: This deals with the same kind of problem as it affects individuals who pay quarterly instalments.

Senator Benidickson: When you say "the same", do you mean it is the same as for farmers and fishermen?

Mr. Cohen: Yes. The amendment for farmers and fishermen was very consequential on this one.

Senator Lang: Why is this better?

Mr. Cohen: Well, it just clarifies the basis. You are entitled to pay your instalments on the lesser of what you think this year's income will be or something based on last year's. What we have done is to redefine, without changing the policy, what that last year's calculation may be in order to make it easier for people to work it out.

The Chairman: You just calculate your instalments on the basis of what your tax was last year. The only trouble is that if you get a reassessment, and you get it later in the year than the time you pay the first instalment, there could be some difficulty.

Hon. Senators: Carried.

Senator Benidickson: Is there something new in this bill that makes it obligatory for a person to pay by instalments the tax on income that has not been subjected to deduction at source?

Mr. Cohen: There is nothing new, no.

Senator Benidickson: Except perhaps in administration in the Department of National Revenue.

Mr. Cohen: There is nothing new.

Senator Benidickson: Nothing new?

Mr. Cohen: No.

Senator Benidickson: It is simply proposed for the administration of the Department of National Revenue as a better method.

Mr. Cohen: The Department of National Revenue really worked out a practice which made better sense out of the old rules, which were difficult to handle. Everyone reported on the basis of practice, rather than the law. We have codified the practice.

Senator Benidickson: The payments by instalment of tax on income which has not been subject to deduction at source is calculated on what base? Is it last year's income of a similar nature?

Mr. Cohen: No, there is a choice. It can be calculated on the taxpayer's estimate of his income for this year. It used to be last year's taxable income with last year's or this year's rates applied. Even Senator Hayden said it is last year's tax.

The Chairman: Yes.

Mr. Cohen: It never was last year's tax; that was the practice.

The Chairman: Yes.

Mr. Cohen: We propose to amend the law so that it can now be safely based on the actual tax liability last year.

Senator Benidickson: What are the penalties if that is not done?

Mr. Cohen: Interest.

Senator Benidickson: Is it an automatic percentage of the tax after, for instance, the expiry of a quarter?

Mr. Cohen: No, it is interest.

Senator Benidickson: Is it interest on the non-payment?

Mr. Cohen: That is correct.

The Chairman: The interest is calculated on the period of time that the government has not had your money when they should have had it.

Mr. Cohen: That is correct.

Senator Hays: How can we obtain the interest from the computer when it has made a mistake and continues to bill us?

Senator Benidickson: What is the rate of the interest?

Mr. Cohen: 6 per cent.

The Chairman: Does clause 56 carry?

Hon. Senators: Carried.

The Chairman: Clause 57 is the provision for corporation instalments. There are no problems there. It is straightforward reading, unless someone has a question on instalment payments by corporations?

Shall clause 57 carry?

Hon. Senators: Carried.

The Chairman: We now move to clause 58.

Mr. Cohen: Clause 58 is the provision which allows six years to pay the tax on deemed realization on death or on leaving the country.

Senator Hays: We suggested 20 years.

The Chairman: At some time or other we may wish to make it 10 years. Does that now go through to page 102? Does all that deal with the corporation instalment basis for payment of tax?

Mr. Cohen: Yes, sir, it is a long provision.

The Chairman: Yes, I know; I read through it once and thought it was complicated. I am a great believer in being more concise in these matters. I would rather say, "Notwithstanding anything else anywhere in the income tax law, this is it".

Mr. Cohen: It is the "this is it" that takes all that time and all those words, sir.

The Chairman: Shall clause 58 carry?

Hon. Senators: Carried.

The Chairman: We come now to clause 59.

Mr. Cohen: Clause 59 is purely consequential on the discussion we just had with respect to instalments.

Senator Benidickson: For individuals?

Mr. Cohen: Yes.

The Chairman: Shall clause 59 carry?

Hon. Senators: Carried.

The Chairman: We will move to clause 60.

Mr. Cohen: Clause 60 is the repeal of the tax on ineligible investments.

The Chairman: That is right; that is the small businesses, the one we recommended, so we do not hesitate on that. Does clause 61 deal with small businesses also?

Mr. Cohen: There is a recovery of the small business deduction when a small corporation is sold and control is acquired by non-residents. Under the act as previously drafted that situation could arise if the control was acquired by Canadian corporations and non-residents together. This provision eliminates the Canadian corporation; the control must be clearly acquired by non-residents, not just by non-residents and others. So this is a relieving provision. It was essentially a drafting error.

The Chairman: So that in those circumstances they are entitled to the preferred rate of 25 per cent?

Mr. Cohen: The point is the preferred rate is not lost if the control is acquired simply by another Canadian corporation. It is only lost and recapture suffered when non-residents acquire control.

Senator Benidickson: But the benefit does not flow if the control is non-resident?

Mr. Cohen: That is correct.

Senator Benidickson: Is it whenever control becomes non-resident?

Senator Lang: What is control?

Mr. Cohen: More than 50 per cent of the votes at a shareholders' meeting. That is not in the statute, but it is a judicial interpretation.

The Chairman: Does clause 60 carry?

Hon. Senators: Carried.

The Chairman: Clause 61?

Hon. Senators: Carried.

The Chairman: We move now to clause 62.

Mr. Cohen: Clause 62 is a correction of the French version.

The Chairman: Does clause 62 carry?

Hon. Senators: Carried.

The Chairman: We now have clause 63.

Mr. Cohen: This is the other half of the discussion of Senator Lang's inquiry on the distribution of surpluses and the special tax.

Senator Benidickson: Is this the 15 per cent tax?

Mr. Cohen: This relates to the 15 per cent tax, but under the old rules a miscalculation would result in the tax on excessive election.

Senator Benidickson: This would be the 100 per cent that Senator Lang was discussing.

Senator Lang: That section is not deleted?

Mr. Cohen: No, sir.

Senator Lang: Why is the 100 per cent penalty section not repealed?

Mr. Cohen: It appears to be a 100 per cent penalty tax, but it really is not. Working the numbers through indicates that it is the amount of tax that would be paid by a shareholder in a 61 per cent marginal tax bracket—that is the highest marginal tax bracket—if he took that out as a dividend. The amount of what he would have net after he paid his tax is produced by paying 100 per cent inside the corporation. The actual number is 98 point something. It is not really a penalty tax. It is to put a taxpayer in the same situation as if he took it as an ordinary dividend.

Senator Lang: Let me give you an example of a corporation which in its opinion has a \$1 million capital surplus. The tax department says no, that is undistributed income and you paid it out as capital surplus.

Mr. Cohen: Senator, the amendment before you provides an opportunity to get back outside. In other words, if the Department of National Revenue says that is really undistributed income you can pay the 15 per cent on it and suffer no penalty tax. That is really the thrust of this amendment.

Senator Lang: That solves the problem.

Senator Benidickson: Taking into account the latest budget, the applicability to the 1973 taxation year, is 61 per cent the top personal rate of income tax?

Mr. Cohen: I pulled that number out, senator. I am not sure that it is correct.

Senator Benidickson: I thought it was reduced from that.

Mr. Cohen: The base was changed and the exemptions reduced. I am speaking in terms of the posted tax rates throughout the country. It is really less than that as a result of the 5 per cent credit. You are correct.

Senator Benidickson: And it could be larger in a province such as Manitoba.

Mr. Cohen: If some of the provinces raise their rates it could increase. I am really speaking with respect to the posted marginal rates.

The Chairman: Do clauses 63 and 64 carry?

Hon. Senators: Carried.

The Chairman: We now come to clause 65, at page 108.

Mr. Cohen: This adds to the list of exempt property that does not fall prey to what is known as the tax on foreign property by certain investment institutions, such as trust funds and others of that nature. It adds the Caribbean Development Bank. It simply extends the list.

The Chairman: Does clause 65 carry?

Hon. Senators: Carried.

The Chairman: We will go to clause 66.

Mr. Cohen: This is one of the provisions pertaining to life insurance.

The Chairman: Yes, I remember this. Does clause 66 carry?

Hon. Senators: Carried.

The Chairman: We now come to clause 67.

Mr. Cohen: The remarks with respect to clause 66 apply to clause 67.

The Chairman: Does clause 67 carry?

Hon. Senators: Carried.

The Chairman: We should know them by now. Next is clause 68.

Mr. Cohen: Clause 68 implements changes in the withholding tax. The most important one is the provision which permits the minister to excuse from the withholding tax in hardship situations.

The Chairman: Are these the so-called hardship cases?

Mr. Cohen: Yes, sir. It also picks up the problem which I believe was of interest to this committee with respect to the exempt institutions, specifically teachers' insurance fund.

Senator Benidickson: What is this business about films?

Mr. Cohen: Subsection 212(5) of the statute imposes a withholding tax on motion picture film royalties paid to non-residents. The amendment ensures that the tax only applies to royalties to the extent that the films have been or are to be used or reproduced in Canada. As previously drafted, we might have imposed a withholding tax on films having nothing to do with Canada, which was never intended.

The Chairman: Shall clause 68 carry?

Hon. Senators: Carried.

The Chairman: Clause 69 is the French version. Is clause 69 carried?

Senator Benidickson: Clause 69 is not all French; are there any other items?

The Chairman: yes, on the next page. What is the effect of these provisions on page 112, Mr. Cohen?

Mr. Cohen: Which ones?

Senator Benidickson: Subclause (2), for instance.

The Chairman: The definition of exempt income in section 248(1). It is repealed, and then they go on to make another definition.

Mr. Cohen: When the Income Tax Act was introduced in 1972, the exempt income was defined as not including dividend, so that any interest expenses which was related to the earning of that dividend would be deductible. The

definition of exempt income is being amended to make it clear that certain tax avoidance schemes cannot be carried out by relying upon the fact that dividend is not exempt income.

Senator Benidickson: This is closing a loophole?

The Chairman: Does clause 69 carry?

Hon. Senators: Carried.

The Chairman: That carries us through to Part II, which takes us to to page 114. The rest of the bill deals with Income Tax Application Rules.

Mr. Cohen: That is correct, except for the very last clause. Clause 92 deals with another statute altogether; it is a technical change. Down to clause 91 it deals with what we call ITAR.

The Chairman: Between pages 114 and page 140, what is there about these rules? They involve changes in the rules which were part of C-259 that was enacted at the time.

Senator Benidickson: Circulated by the Department of National Revenue.

Mr. Cohen: The ITAR stands for Income Tax Application Rules. They are a body of rules in the statute and were a separate part of Bill C-259. They are transitional rules.

Senator Lang: Why did they not call them transitional rules?

The Chairman: That is what they are. When Bill C-259 was being discussed here we talked about them as being transitional.

Mr. Cohen: I admit that is the way I describe them.

The Chairman: In the changes which have been made here, should our attention be directed to any particular one?

Mr. Cohen: I would have to turn the pages to tell you. The ITAR are very important. They contain, for example, the neutral zone, because that is a transitional problem.

Senator Benidickson: When you say "transitional", Bill C-259 really created a new basic Income Tax Act. These rules were necessary because of the difference in the end of the fiscal year.

Mr. Cohen: Essentially, the problem was how to get people from the old system to the new one. That is a transitional problem. We needed a whole body of rules which would get people from the old system to the new system as generously and sensibly as possible. The reason they are not part of the Income Tax Act, *per se*, is because that in time they will cease to be of any consequence. Most of them pertain, for example, to property which you owned on January 1, 1972. If you went out tomorrow and bought a piece of property, fresh, then the rules would have no application to you and gradually they will cease to apply to anyone. It may take a long time, but gradually that will happen. Perhaps the most important ITA rule, to which I referred earlier, is the neutral zone. That is the rule that says that for purposes of capital gains taxation you can choose to be taxed on the higher of what you paid and what it was worth on Valuation Day. Eventually

everyone will have to dispose of the property they owned on January 1, 1972, and these rules will cease to apply.

Senator Benidickson: You have this option with respect to individual items in your portfolio of stock. The option is applicable individually on each stock.

Senator Lang: No.

Senator Benidickson: You have to choose across the board.

The Chairman: You have to go one route or the other and stay with it.

Mr. Cohen: One route is to take the higher of the cost and the fair market value, and the other is to take the fair market value.

The Chairman: But you still have not answered my question. Is there any good reason why we need to spend time on these ITA rules?

Mr. Cohen: I do not believe there is.

The Chairman: Do they impose a penalty, or change the status of a taxpayer?

Mr. Cohen: Yes, they change the status of the taxpayer. Without question they are relieving, but I do not wish to hold to that statement without looking at each one; but heavily, on balance, they are relieving.

Senator Lang: May I direct your attention to 32.1, on page 129?

The Chairman: My own feeling on these ITA rules is that we should simply approve them. We are not going to change them. I would not think so, anyway.

Senator Lang: I do not know what this 32.1 means.

Mr. Cohen: That is a relieving provision. It is part of the problem of distributing the old system surpluses. If you made an invalid or improper election in 1972, you have until 1973 to retroactively correct that election.

The Chairman: I do not see that any purpose can be served by attempting any correction or analysis of these transitional rules. I do not wish to be taken as an expert, but having read through them, they seem workable. That is the most that I can say. If we are not going to do anything with them, we may as well pass them.

Senator Hays: Agreed.

The Chairman: I believe there was something you wanted to say, Mr. Cohen, with regard to Part III.

Mr. Cohen: No. I merely wanted to point out that it is not part of the ITA rules. That is all. It is a technical amendment. It is to make sure that the surtax is applied to the right companies and the right period, and that it did not apply when it should not apply.

The Chairman: It is beneficial—

Mr. Cohen: I do not believe it changes anybody's expectation about the policy. I think everybody assumes that the rules will work the way this amendment will make them work.

Senator Beaubien: Mr. Chairman, I move that we report the bill without amendment.

The Chairman: Is it agreed that we report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: Senator Connolly is not here to deal with Bill C-172, to amend the Customs Tariff.

Perhaps Senator Bourget can tell us what is happening in the chamber.

Senator Bourget: The Senate has not sat yet. They are waiting until the committee adjourns before ringing the bell.

The Chairman: We have yet to deal with Bill C-172. Senator Connolly was going to take the chair. As honourable senators are aware, Senator Connolly sponsored the bill.

Perhaps we can shorten this, Mr. Grey. Senator Connolly gave a full explanation of this bill on second reading last evening, in addition to which there was also some discussion earlier today. I have read the bill; I have read what Senator Connolly said last night; and I heard what you had to say earlier today. It seems to me the provisions are quite straightforward. They seem to be based on policy decisions. Am I correct?

Mr. Grey: Yes, Mr. Chairman.

The Chairman: Of course, all legislation proceeds from policy decisions. I am referring to policy decisions in the field of trade between Canada and developing countries, how we should deal with them, and to what extent we should deal with them.

My own feeling is that there are no items in the bill where special conditions or rates, or anything else, are stipulated, which we in this committee would like to change.

Senator Lang: Were we to make a change, Mr. Chairman, it would be a precedent.

The Chairman: I am not so concerned about that. If I felt strongly enough about something I would be willing to change it.

I am trying to determine why, in the circumstances, we should spend time analyzing the provisions of this bill. We had a full explanation of it on second reading and we are aware of the principles involved.

Senator Lang: I move that we report the bill without amendment.

Senator Benidickson: I heard Senator Connolly's speech last night. Unfortunately, I was not here this morning to hear Senator Grosart. I do not know whether he had any criticism on the bill. I do feel it should be pointed out that the right of withdrawal, by order of the Governor in Council, is fairly wide.

Mr. Grey: There is a right to withdraw the benefits of the preferential tariff from any country or to withdraw any product.

Senator Benidickson: By order in Council?

Mr. Grey: Yes. This is a non-reciprocal, non-contractual arrangement.

Senator Benidickson: So if it turns out that some Canadians are being hurt as a result of the schedules as proposed, the rights of withdrawal are fairly wide as far as the executive is concerned.

Mr. Grey: Yes. There are no international obligations which inhibit us from withdrawing.

Senator Benidickson: So we are not bound by these schedules?

Mr. Grey: No. It is a non-contractual arrangement.

The Chairman: In the circumstances, I think we should report the bill without amendment.

Senator Hays: It is so moved.

The Chairman: The protection is there. If at any time Canada wants to change its position, then the authority to do so is there.

Mr. Grey: That is correct, Mr. Chairman.

The Chairman: Is it agreed that we report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.



FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

Issue No. 2

WEDNESDAY, MAY 23, 1973

First Proceedings on the Examination of the Document Intituled:
"Foreign Direct Investment in Canada"

(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 16, 1973:

“The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the document entitled “Foreign Direct Investment in Canada”, tabled in the Senate on Monday, 15th May, 1972, and the subject-matter of any bill arising therefrom, in advance of such bill coming before the Senate, or any other matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.”

ROBERT FORTIER,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, May 23, 1973.

(2)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, trade and Commerce met this day at 10:45 a.m. to examine and consider document intituled: "Foreign Direct Investment in Canada".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Buckwold, Burchill, Connolly (*Ottawa West*), Cook, Desruisseaux, Flynn, Lang, Macnaughton, Molson, Sullivan and Walker. (14)

Present, but not of the Committee: The Honourable Senators Everett, Lafond and McNamara. (3)

In attendance: Mr. E.R. Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Department of Industry, Trade and Commerce:

Mr. R.D. Gualtieri, Special Adviser to Deputy Minister.

Department of Justice:

Mr. F. E. Gibson, Legal Adviser.

At 12:30 p.m. the Committee adjourned until 9:30 a.m., Wednesday, May 30, 1973.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, May 23, 1973

The Standing Senate Committee on Banking, Trade and Commerce met this day at 10.45 a.m. to give consideration to the document entitled "Foreign Direct Investment in Canada."

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, the gentleman on my immediate right is Mr. R. D. Gualtieri, of the Department of Industry, Trade and Commerce. On his immediate right is Mr. F. E. Gibson, of the Department of Justice. If necessary, they may make reference to others from their departments who are available here.

Mr. Gualtieri, the first thing we would like you to do is tell us about yourself, your background, and how you come to be here. True, you were invited by me to come, but there were reasons for inviting you and you might supply the committee with that information.

Mr. R. D. Gualtieri, Special Adviser on foreign investment to the Deputy Minister, Department of Industry, Trade and Commerce: Mr. Chairman and honourable senators, thank you.

Before proceeding, perhaps I should take the opportunity to introduce my two colleagues at the back of the room. The gentleman wearing glasses is Mr. Duff Friesen, also from the Department of Justice. He has been helping me deal with the numerous representations that we have been having on the bill since it was introduced in the House of Commons on January 24. Beside him is Mr. Ron Pike, who is at the moment in the Investment Analysis Branch of the Department of Industry, Trade and Commerce.

I am not sure, Mr. Chairman, how far back you want me to go in giving you my background.

The Chairman: I understand you are not a lawyer.

Mr. Gualtieri: That is correct, nor am I an economist; and you may wonder, then, why I am dealing with the foreign investment issue.

My background is in philosophy and perhaps that does equip one to deal with a whole range of issues. After obtaining a degree in philosophy at McGill University, I went to Oxford where I did a P.P.E. Then I moved on to the Department of External Affairs where I spent seven years, including a posting to Yugoslavia. At the end of that period I concluded that most of the important issues facing Canada were domestic and internal and that, if one wanted to be where the action was, in a sense one should move to a domestic

department. I moved to the Department of Trade and Commerce, as it then was, subsequently the Department of Industry, Trade and Commerce, to work on trade policy matters, and I became the head of the GATT division, dealing with international trade policy questions.

As an extracurricular activity at one point I did a little paper on joint direct investment in Canada. This was at the end of 1969, at the time that the government was starting to examine this issue as one of the priority problems it had identified after the 1968 election.

Senator Desruisseaux: Excuse me. Is that paper published?

Mr. Gualtieri: No, it is not. It was an internal, confidential document.

On the basis of the work that I had done when the Honourable Herb Gray was asked to prepare a policy position for the government, I was asked to join his little task force, and that was in July, 1970. I worked with that task force until it was disbanded in June, 1972.

Senator Connolly: Was that on the production of this document, "Foreign Direct Investment in Canada"?

Mr. Gualtieri: That is correct. Then I moved back to the Department of Industry, Trade and Commerce as special adviser on foreign investment to the deputy minister, and, basically, I have been advising him and the minister on foreign investment policy, and in particular on this bill, which I see all senators have in front of them.

That is all I have to say by way of general background.

Senator Macnaughton: May I ask you, Mr. Gualtieri, are you from Montreal?

Mr. Gualtieri: Yes, I am, sir.

Senator Macnaughton: Were you born there?

Mr. Gualtieri: I was born in Niagara Falls, but I grew up and was educated in Montreal.

Senator Desruisseaux: How long have you been in your present situation?

Mr. Gualtieri: Well, I started working on the foreign investment issue, as I say, in early 1970, and I have been in my present job with the deputy minister there for a little over a year now.

The Chairman: Are there any other questions on Mr. Gualtieri's background?

All right, Mr. Gualtieri, go ahead.

Mr. Gualtieri: Well, gentlemen, I know that my minister is looking forward to an opportunity to come before you to discuss the general philosophy and policy-line behind Bill C-132. What I should like to do today is to concentrate largely on a description and an explanation of this bill, and leave the more general policy questions to my minister.

I have a suggestion in procedural terms which I hope might be acceptable to members of the committee, and that is that it seems to me that in discussing the bill one can logically break its presentation into three parts. The first is a general introduction on some of the major matters, like the significant benefit test, the role of the provinces, and so on. A second part deals with what I call the basic structure, the guts of the bill, the key concepts—such as: What is a non-eligible person? How do we define an acquisition of control? What do we mean when we talk about a Canadian business?—and a similar group of concepts related to the new business provisions of the bill and the presumptions which are in the bill. That group of questions I regard as a second part. Then, lastly, there are issues of procedure and administration.

If it is agreeable to the committee, what I would like to suggest is that we break up the issues into those three parts and that we then have a discussion on each of those separately. Otherwise, I envisage a rather lengthy and, I am afraid, somewhat boring presentation. I think that it might be more fruitful if we divide the issues up into those three blocks, as suggested.

The Chairman: Well, I think I answered this question of yours earlier. First, we will try to keep away from questions of policy. That is up to the minister. We should not expect you to answer those. Such questions as the need for this bill would be in the area of policy; although, since you have acknowledged some contribution to this document, what I call the "Gray Report", "Foreign Direct Investment in Canada", I would think in the course of our questioning you that, if we felt there were any points in that report that we wanted to have elaborated or wished to challenge, we would certainly consider you fair game.

Mr. Gualtieri: Well, I would do my best, of course, to answer any questions put by honourable senators.

The Chairman: You did make one statement which I would like you to elaborate. You said that numerous representations had been received. I take it that those were in relation to this bill—or were they in relation to the earlier bill?

Mr. Gualtieri: Well, of course, they were in relation to both, but more particularly I was referring to this bill.

The Chairman: That is, Bill C-132?

Mr. Gualtieri: That is correct.

The Chairman: Were those communications in the form of the submission of briefs or were they oral representations?

Mr. Gualtieri: We have had both, as a matter of fact. There have been a number of written representations from interested organizations, from people with a definite interest in the bill, as well as from the general public; but, in addition, I have had a number of telephone calls from people who have raised particular points, and I have met with people who wanted to discuss various issues.

The Chairman: So far as the briefs are concerned, do you regard them as being submitted in confidence, or do you consider that they should be available for our study?

Mr. Gualtieri: Well, most of them have been submitted in confidence, directly to the minister, but a number of them have also, subsequently, been re-submitted to the Commons committee.

The Chairman: I must say that anything in the way of representations that have been released or will be released to the Commons committee we will insist on having a look at. That is the view of the committee.

Senator Connolly: Could we have a list of those briefs that have been so submitted?

The Chairman: Yes.

Mr. Gualtieri: I think that question should more properly be addressed to the chairman of the House of Commons committee. Or perhaps the clerk of this committee could get in touch with the clerk of the Commons committee and arrange for an exchange of briefs.

The Chairman: No, Mr. Gualtieri. We do not go to the Commons committee to get information. We go directly to the source, to where the information is.

Senator Connolly: If the minister has released the briefs to the Commons committee . . .

Mr. Gualtieri: No, the minister has not released these briefs. They have been re-submitted independently.

Senator Connolly: Oh, they have been submitted by those who prepared the briefs in the first place?

Mr. Gualtieri: Correct.

Senator Connolly: Then all we want at the moment is a list.

The Chairman: All we need is a list of what was submitted.

Senator Desruisseaux: Mr. Chairman, may I ask also if there has been any communication with the provinces in respect of this bill?

Mr. Gualtieri: Yes, there have been communications.

Senator Desruisseaux: Those we would also like to have.

Senator Connolly: Would those communications have been confidential, too?

Mr. Gualtieri: Yes, those have been privileged communications.

Senator Connolly: I do not want to make it difficult for the witness. Perhaps we are making him feel we are tough here—and perhaps we are—but have these discussions with the provinces been conducted mainly with the minister, and were they confidential?

Mr. Gualtieri: Yes, they have been conducted mainly with the minister and I believe he would regard them as confidential exchanges. But may I suggest, gentlemen, that these questions be put to the minister when he appears, because they have been conversations which he has had either in written form or else at meetings, for example, which he has had with provincial industry ministers.

The Chairman: Mr. Gualtieri, I am not going to try to push you into the area of policy, but you know that reference is made to the provincial legislatures in clause 2(2) of Bill C-132, in the “factors to be taken into account in assessment”. This subclause refers to “economic policy objectives” which might be enunciated by the government or legislature of any province. So, to the extent that you can in the course of your discussion with us, we would like to get from you some view on, first—if you can answer it without dealing with policy—why that reference to the legislature of any province was included, and, second, what is the position which has been put forward by the legislature of any province?

Senator Connolly: Or the government.

The Chairman: Or the government, yes.

Mr. Gualtieri: I was going to make the point that the reference is to an obligation on the part of the federal government to take into account the industrial or economic policies enunciated by a provincial government or a provincial legislature. I think, without treading on policy ground, I can quite simply state that this is an attempt by the government to indicate that it is serious in wanting to have an effective mechanism for federal-provincial consultations on this issue.

The Chairman: You are sure it is not an indirect way of trying to acquire jurisdiction?

Mr. Gualtieri: That is not the intention.

The Chairman: Because there may be some question in the area of constitutionality as to whether control of a business is a matter that directly rests in the province. Has the question of constitutionality been considered?

Mr. F. E. Gibson, Director of Legislation Section, Department of Justice: Yes, it has. In the general context of both this bill and its predecessor, the members of the House of Commons committee which considered the earlier bill questioned witnesses as to the competence of Parliament to enact this legislation, and some particular aspects of it. We did respond to those questions at that time. But in the briefs which were presented to the committee of the House of Commons at that time, that was not, to my

knowledge, one of the fundamental issues raised. Generally on the question of the competence of Parliament to deal with these matters, we are, of course, concerned with what we describe as acquisitions and establishments of new businesses by non-eligible persons, and non-eligible persons are defined in terms of non-Canadians, if I may use that term. There is the element of extraterritorial influence over the Canadian economy.

The Chairman: It goes further than that. It deals with non-eligible persons who would be persons who were not Canadian citizens, and who were not landed immigrants who have followed the course that landed immigrants are expected to follow to acquire citizenship. There is also another phase that it covers. The language says “ordinarily resident”. Now, “ordinarily resident” has a variety of meanings. For income tax purposes it has one meaning. I know by looking at many English cases that for purposes of immigration enforcement in England, “ordinarily resident” has been interpreted to mean lawfully ordinarily resident. Now what kind of “ordinarily resident” are we talking about in this bill?

Mr. Gibson: Mr. Chairman, the words appear in two contexts in this bill, I believe. They appear in the definition of “Canadian business” and they also appear in the definition of “non-eligible person”. They both appear in subclause (1) of clause 3, on pages 3 and 4 of the bill. In connection with “Canadian business” the term “ordinarily resident in Canada” appears in paragraph (a) of the definitions and also in paragraph (a) dealing with “non-eligible person”. The words are unqualified, and as you see, Mr. Chairman, the courts have interpreted these words in various contexts. In this context we are really not looking as much to a legal concept of “ordinarily resident” as to a concept of physical presence. I believe that in the context of the Income Tax Act the courts have looked to the actual number of days in any calendar year that an individual was resident in Canada in order to determine whether he was “ordinarily resident”, and I think that is the concept that is inherent in this bill.

The Chairman: Yes, but there is still a broad field to explore. First of all, I think it can be admitted that if this bill is dealing with federally incorporated corporations, then there could be no question about constitutionality. But if it is dealing with and affecting provincially incorporated corporations, then there might be some question. Do you agree with that?

Mr. Gibson: Yes, I agree that a question could be raised. The intent of the bill is not that it be limited to federally incorporated companies, and I agree that to the extent it goes beyond that and touches upon provincially incorporated companies a question arises. We have given to the House of Commons the opinion, which we still hold, that the federal Parliament does have jurisdiction to deal with the matter set out in this bill in relation to provincially incorporated companies.

The Chairman: Was that a written opinion?

Mr. Gibson: No.

The Chairman: Is it reported in the proceedings of the committee?

Mr. Gibson: I believe it is. It is a matter which Mr. Lambert questioned me on in the committee, and I believe that questions were also directed to Mr. Thorson, of the Department of Justice, on the matter.

Senator Connolly: Would you send us the reference to that, Mr. Gibson, please?

Senator Desruisseaux: Mr. Chairman, may I ask if there were any disagreements in the consultations with the provinces?

The Chairman: Mr. Gualtieri may answer that question. I do not think there is any question of policy involved. But is there anything at the present time, that you know of, which could be called an agreement or understanding between the Government of Canada and any province, or all of the provinces, bearing on this factor which appears in paragraph (e) of subclause (2) of clause 2 of the bill supporting that position, or is this a voluntary concession that the federal authority is making in recognition of the provinces?

Mr. Gualtieri: I think I could say that the decision to insert the reference to provincial economic and industrial policies was a federal initiative, but in large part it was the result of talks that Mr. Gray had when he toured provincial capitals after the take-overs bill was introduced, and also as a result of the deliberations before the Commons Committee on Finance, Trade and Economic Affairs. I do not think there is any one cause; I think it is the result of the federal government's own reconsideration of the issue, provincial views, plus other representations made to the Commons committee.

The Chairman: Is there not enough authority in (a), (b), (c) and (d), without having (e) in subclause (2) of clause 2 at all, so as to avoid the references to the policies that might be enunciated by a province? You see, "significant benefit" means significant benefit to Canada. Now, do you think that is as broad as it would appear, or could it mean just a local area? Let us say, for instance, that Stratford, Ontario, was going to be the scene of the setting up of an enterprise by a non-eligible person. If you did not have (e), would you be at a loss to deal with this matter under this act because this is a purely local area and the benefit would be only to the local area? Have you attempted to say, "Well, because it is local, it is not of significant benefit to Canada."?

Mr. Gualtieri: Mr. Chairman, I interpret your question as having two parts. The first part is, why have we included as a factor the compatibility of the acquisition with national and provincial industrial and economic policies? Secondly, in the absence of that factor, would the other factors, in particular the factor dealing with the impact on employment, productivity, efficiency and competition, be sufficiently broad to encompass the concerns we would have for considering a particular investment in a particular location, province or region?

Let me deal with each of those questions in turn: Firstly, why have we included a factor such as compatibility with industrial and economic policies? I think the plain answer to that is that the other factors are fairly precise and that one does need, in dealing with economic matters, a sort of more general factor which will allow one to take into account, for example, the balance of payments

effects that a particular investment might have. One might also want to look at the impact on Canadian capital markets. The point is that there are a whole host of other economic and industrial policies which could have been elaborated in the factors, but the list would have been practically endless.

Senator Desruisseaux: Would you say that you are within the Constitution in including those factors?

Mr. Gualtieri: I am not quite sure I understand the question, senator.

Senator Desruisseaux: Well, according to certain people it is a question of the Constitution as to the areas in which you can operate, types of businesses or companies, for example.

Mr. Gualtieri: Certainly our view is that all these factors are compatible with the powers of the federal parliament.

Senator Desruisseaux: Is that a conclusion that was made, or received, or asked for?

Mr. Gualtieri: It was asked for of the Department of Justice, received and stated publicly, on a number of occasions. We have also undertaken to provide references to that.

Senator Connolly: Mr. Chairman, I hope the witness will continue along this line and finish. I would like to return a little later to the question of jurisdiction which was raised by Senator Desruisseaux with Mr. Gibson, but I think we should continue along this line.

The Chairman: You may reserve that. You did not answer one of my questions, Mr. Gualtieri, as to whether there is anything in the form of an agreement or an understanding between the federal authority and the provinces that the minister will recognize policies which they enunciate in relation to this approach to the establishment of an enterprise in Canada by non-eligible persons.

Mr. Gualtieri: No, I think I would have to say there is no agreement between the minister and any province. The situation was that, on the basis of the discussions that various ministers had with the provinces, it became clear that the provinces were concerned about the impact of this bill—at least, some of them were concerned about its impact on their economic and industrial development objectives. The insertion of this obligation on the federal government to take provincial views into account was an attempt to persuade the provinces that this bill would not be implemented without serious consultation with them.

The Chairman: Where is that provided in the bill?

Mr. Gualtieri: Well, I would have thought that an obligation on the federal government to take into account the industrial and economic policy objectives initiated by a provincial government or its legislature does represent an undertaking by the government to consult them.

Senator Connolly: You say clause 2(2)(e) does that?

Mr. Gaultieri: That is correct. I would also say that the minister has publicly stated that he intends to consult the provinces: firstly, before the present bill is extended from take-overs to cover the establishment of new businesses; secondly, with respect to particular transactions. He has indicated to provincial industry ministers that at the appropriate time—that is, after the bill has passed Parliament—he will be writing them in connection with establishing a type of formal consultative mechanism.

Senator Laing: I am interested in knowing what “taking into consideration” means? Does this mean that we will study the enactments of the provinces and be guided by them; or, if there were a collision in respect of one particular case, would the minister take that into consideration and ask for the opinion of the province? Would they be one of his advisers and, in certain cases, his prime advisers? Or are we going to study the enactments of the provinces and make our decision here?

Mr. Gaultieri: No, I think it goes beyond the study of provincial enactments. By earlier statements the minister has made, it is clear that with respect to particular transactions he will consult the provinces and obtain their views. You may also recall, gentlemen, that the confidentiality provisions of this bill were amended so as to allow the minister to pass on to the provinces confidential information which he obtains.

Senator Laing: So, in one particular case the minister might consult the province?

Mr. Gaultieri: I would go beyond the “might” and say that my understanding is that the minister has undertaken to consult the provinces with respect to particular proposals that affect them.

Senator Laing: Would the advice of the province receive the highest priority?

Senator Flynn: The questioner would make a better witness, with his experience.

The Chairman: Senator Laing, it occurs to me that the factors enumerated are exclusive. That is the first point. Would you agree that they are exclusive, Mr. Gaultieri?

Mr. Gaultieri: Yes.

The Chairman: So that if I do not find in those factors something which the minister might otherwise wish to do, such as consulting the provinces, this bill provides no authority.

Mr. Gaultieri: Before answering your question, Mr. Chairman, I might finish the answer to Senator Laing. I think it is impossible to generalize and say that in all cases provincial views will be predominant in the minister's decision. It is, however, clear that in this type of country, a federation, provincial views will always be given very high priority. I wish to continue and say, however, that that does not mean that provincial governments will have a veto over the federal decision. The decision to allow or disallow a particular transaction covered by this bill must ultimately remain with the federal Government, if we are to have a national policy.

Senator Desruisseaux: Regardless of the Constitution?

Senator Connolly: Could we take a practical example, one which I think may assist Senator Laing? The bill lays down certain provisions, certain limits, beyond which non-eligible persons shall not own certain capital interests in a given company. In the case of a public company it is 25 per cent, and in the case of a private company it is 40 per cent.

Consider a case in which those guidelines have been violated and larger proportions are in fact owned in an enterprise being established in a province, and the province declares it desires the industry but the 25 per cent or 40 per cent guideline has been violated. In that case, does the minister in the federal department say, “You cannot have it. You cannot have that industry because that guideline as set out in this bill has been violated and the percentage allowed has been surpassed”?

The Chairman: No, senator. I think you have missed something there. I do not understand the bill fully—Mr. Gaultieri can agree or disagree with me—but the bill says that if you are a non-eligible person you cannot acquire and enter a Canadian business enterprise, that these percentages establish whether or not you are a non-eligible person. If you are a non-eligible person, you must go to the minister and get his approval.

There would be no sense in having a Canadian enterprise as such, going to the minister and asking for permission. So the determination of “significant benefit”, I take it, must relate to persons who are in the category of non-eligible persons and who are seeking to establish a business or to buy into an operation in Canada.

Senator Connolly: Mr. Chairman, what you are telling us, in effect, is this, that while there is a definition given for a non-eligible person—and perhaps we can revert to this 25 per cent figure for a public company and 40 per cent for a private company—it does not matter whether that limit is exceeded, if the non-eligible person can get permission from the board or the minister to proceed to acquire that business. Is that what you are saying?

The Chairman: That is correct.

Mr. Gaultieri: That is correct. I think it is perhaps somewhat misleading to refer to the figures cited by the senator as limitations—the 25 per cent figure, which is part of the presumption of non-eligibility in relation to a public company, and 40 per cent in relation to a private company. It is a presumption that would be used by the minister in court in determining who should provide the onus of proof as to where control basically lies.

The key point about the non-eligible concept is the question of fact: is a person in fact non-eligible? If he is not then he can ignore this bill and the review process. If he is non-eligible—foreign-controlled, in brief—he must go through the review procedure when he contemplates certain transactions—a takeover; the establishment of a new business in Canada if he is not already doing business in Canada and wants to go into an unrelated line of activity. He must go to the minister in those three cases and say, “Here is my transaction. I submit it is of significant benefit to Canada.” The minister will assess that proposal and either agree or disagree.

If he disagrees, he can seek to up the ante and get further undertakings on certain things that the person might do in order to enhance the benefits to Canada. But the review process is not an absolute blocking instrument in any way.

Senator Connolly: That is helpful to me. In other words, presumptions in respect of 25 per cent and 40 per cent are rebuttable by the applicant. Are they also rebuttable in the hands of provincial authorities who might want to see this industry established despite the fact that it is going to be controlled by non-eligible people?

The Chairman: Perhaps we should look a little more at clause 2(2)(c). We have been assuming the need for consultation, et cetera. The minister must find his authority in clause 2(2) for dealing with an application. When it comes down to paragraph (e), it says that the factor he must look at is "the compatibility of the acquisition"—that means the takeover—"or establishment with national industrial and economic policies", it then goes on to say, "taking into consideration industrial and economic policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the acquisition or establishment."

The determination is in the discretion of the minister. It is purely a subjective judgment, even though he talks to the province. It may influence him one way or the other.

Senator Flynn: He does not have to talk. We are speaking of policies and legislation "enunciated by the government or legislature"; but it has to be something public. It is not an opinion expressed by one minister; it has to be expressed by the government or the legislature of the province.

The Chairman: That is why I raised the question before you came in, senator, that surely there needs to be some elaboration of paragraph (e). What are we talking about when referring to enunciation of industrial and economic policies by a legislature? What are they?

Senator Molson: You could also ask, what are "national industrial and economic policies"? I do not think they are defined.

Senator Macnaughton: Mr. Chairman, am I right in stating that, so far as the provinces are concerned, consultation means that you will consult, and it does not go any further than that; that decision rests finally with the minister?

Mr. Gualtieri: With the Governor in Council.

The Chairman: That is right. In other words, all the minister has to do is to take into consideration. That is all it says. He does not have to follow up; he does not have to talk to them. If he can find some place where they can enunciate a policy, he can use that as a basis for proving—and I go back to my old example that if you have non-eligible people and you want to establish an industry in, say Stratford, Ontario, it may be just feeding that local area. Is that compatible with "national industrial and economic policies", and is it in conflict with any "industrial and economic policy objectives" enunciated, say, by the Province of Ontario?

Senator Flynn: It might be a good thing, at this point, Mr. Chairman, to come back to this question. We are going to come around to it when we have cleared the constitutional authority of the Parliament of Canada to deal with all kinds of business. I should like to know what is the basis for saying that the federal government can regulate the acquisition of any business, be it incorporated provincially or otherwise. What is the section of the BNA Act on which this authority is based?

Senator Connolly: That is a question that we reserved.

The Chairman: I made the suggestion earlier, senator, that some of the problems presented by clause 2(2) arise because of the language itself, which says that "the factors to be taken into account are as follows: . . ."

Mr. Gualtieri has agreed with me that they are exclusive. The suggestion I made earlier, when we were sitting *in camera*, was that if, instead of making them exclusive, we said, "shall include", then you would still have a discretion in the minister that is beyond these factors that are enumerated. I think it is something to which we should give some thought.

Senator Flynn: We should deal with the question at this time because, depending upon the answer I get, I may come to the conclusion that a provincial legislature could enact a bill of the same type but with contrary objectives. Then where would we stand? That is why I want an answer to this question.

The Chairman: This is the very question that we were discussing with Mr. Gibson: What is the position when you are dealing with a federal company and when you are dealing with, and attempting to regulate, a provincial company?

Senator Connolly: This is just a parenthetical question, but in Senator Flynn's example the comparable provincial bill to Bill C-132 might very well have the jurisdiction to regulate a federally incorporated company operating within provincial jurisdiction.

Senator Flynn: That is my point.

Senator Connolly: Mr. Gibson seems to have said—at least, I understood him to say—that the federal authority takes jurisdiction in that situation on the ground that it is regulating the activities of non-eligible persons with a view to regulating the foreign control of Canadian businesses.

The Chairman: I am not sure he put it quite that way.

Mr. Gibson: I think that is a fair reflection of what I said on the constitutional basis of this particular act. However, I had not completed my statement on that point. It is one of the factors upon which we would seek jurisdiction for this law being founded. There are others which I should like to enumerate, if I may.

Senator Connolly: I think they should be enumerated. This would also answer Senator Flynn's question.

The Chairman: You made a statement before the committee in the other place?

Mr. Gibson: Yes, as did Mr. Thorson.

The Chairman: And did that statement cover this point?

Mr. Gibson: Yes, it did.

The Chairman: Can you make that statement available to us?

Mr. Gibson: Yes, Mr. Chairman.

The Chairman: And having asked you those questions, would you now care to enumerate the points?

Mr. Gibson: Very briefly, Mr. Chairman, since this is a matter of national scope and the preamble purports to recognize this fact; we would look to the opening words of section 91; we would look to the trade and commerce power; we would look to the alien head; and I believe we would look to the criminal law head.

If I remember correctly, when I discussed these matters before the committee of the House of Commons, I indicated that we would rely upon as many heads of jurisdiction as we could find. In any given case the relative importance placed on any one of them would depend upon the facts of that particular case.

That constitutes a brief enumeration of the heads that we currently have in mind, and I believe it is the same enumeration that we used before the House of Commons committee.

Senator Flynn: Taking into account property and civil rights.

Senator Connolly: I think that is the next question we come to. Perhaps I could ask Mr. Gibson this question: In the committee of the House of Commons was the question of section 92(13), of the provincial authority, raised?

Mr. Gibson: If I recall correctly, it was. There is one distinction I should like to make in relation to this particular argument. What this bill purports to regulate is not the on-going activity of corporations in carrying out the objects which they are assigned by their charter, whatever form they may take. What this bill purports to regulate is: firstly, acquisition of businesses—not of corporations but of businesses; and, secondly, the establishment of businesses. I think there is a distinction between the regulation of the operation of a corporation and the regulation of acquisition of establishments. That in no way infringes on the authority to incorporate companies or the authority of an incorporated company to carry on the powers which are vested in it by its charter. It is only the activity respecting acquisition and establishment of businesses that is relative for the purposes of this particular bill.

Senator Connolly: The courts have never said that.

The Chairman: With all due respect, Mr. Gibson, are we not simply playing with words? If you have a company incorporated under the laws of the Province of Ontario, for instance, which has amongst its objects the acquisition of some other existing company, the shareholdings of which fall in the class of a non-eligible person, are you saying that the federal authority acquires jurisdiction to

regulate the acquisition of a property which is prescribed in the objects of the provincial company? You are making a distinction between the object of a provincial company, which is the acquisition of property, and the fact that it steps out to acquire property.

Mr. Gibson: I am making a distinction, Mr. Chairman, between a particular aspect of the activity of that company and the regulation of the day-to-day activity of the company.

The Chairman: I realize I am monopolizing the questioning, but there is one other comment I should like to make. You said that you would look to the preamble as a basis for the federal authority acquiring jurisdiction. Preambles, as you know, are self-serving. Factually, they have to state accurately the situation. There are many cases on that point.

Mr. Gibson: I hope I did not indicate that we rely upon the preamble as a source of jurisdiction.

The Chairman: You mentioned it.

Mr. Gibson: I think I said that the national interest in this matter was mentioned in the preamble. I indicated that the source of jurisdiction we would look to, based upon this national import, was the opening words of section 91, not the preamble itself.

Senator Desruisseaux: Mr. Chairman, I am somewhat confused. Mr. Gibson has said it is in the national interest. Who decides whether or not it is in the national interest, in these circumstances?

Mr. Gibson: Eventually, of course, if the matter is tested, that would lie with the courts.

The Chairman: But what we are trying to find out now, Mr. Gibson, is exactly what is encompassed within the words, "national interest". Is there anything in this statute which attempts to give meaning to the use of those words?

Mr. Gibson: The specific phrase used in the preamble, Mr. Chairman, is, "national concern". This is not really a preamble; it is a purpose of the act.

The Chairman: Whether it is a purpose of the act or the preamble, very often the preamble is used to indicate a purpose.

Mr. Gibson: Yes.

The Chairman: So we are still in the same area. What happens if we meet the situation where the Province of Ontario, for instance, had laid down certain guidelines in connection with the acquisition of property, and so forth, which, according to this bill, would come under the classification of non-eligible persons? If that is in conflict with what this bill states, where does that leave us?

Senator Connolly: Then we are in the courts.

Mr. Gibson: I expect that we would end up in the courts. It is entirely possible that the courts could reach the conclusion in the

circumstances you outlined, Mr. Chairman, that approval of both levels of government was required for the particular transaction proposed to be engaged in. In my view, it is conceivable that that conclusion could be reached. Where one level of government found, based upon a particular set of objects, that a transaction would not result in significant benefit to Canada, but based upon another set of objects it would result in significant benefit to the province, it might well lie with the courts to find, in those circumstances, that the applicant had to meet both tests.

The Chairman: Perhaps we are dragging this out, but let us assume I incorporated a company under the laws of the Province of Ontario to provide for these acquisitions, and so forth, which apparently are the subject of this bill, and I got that authority from the province of Ontario. You are suggesting that in the courts you would expect that on the authority of this federal bill the decision of the legislature in the province could be negated.

Mr. Gibson: In the circumstances you outline, it is my opinion that the courts would find Parliament had jurisdiction to require that such a transaction be approved, taking into account the significance of the "benefit" test in this legislation.

Senator Flynn: In itself the acquisition of a business is property and civil rights.

Senator Molson: No.

Mr. Gibson: I would argue that it could be trade and commerce as well.

Senator Flynn: The mere fact of buying and selling something has, to me, never been legislated by the federal Parliament as such.

Mr. Gualtieri: It is combines law, sir.

Mr. Gibson: The combines law is one aspect of it that we might take into account, certainly in specific areas.

Senator Connolly: Maybe that is another item.

Mr. Gibson: The matter has been regulated.

Senator Connolly: That is the criminal aspect that you mentioned.

Senator Everett: Isn't the combines law criminal law?

Mr. Gibson: The combines law is criminal law.

Senator Everett: It seems to me that the argument about combines in the civil area is the difficulty.

Senator Connolly: Mr. Gibson said that part of the basis for this is criminal law. Are there penalties involved in this statute?

Mr. Gibson: Yes, sir, there are.

The Chairman: It is true that Parliament can make anything a crime.

Senator Connolly: Does it get jurisdiction by doing so?

The Chairman: It can acquire jurisdiction in that way. The question is whether they have done that in this bill. Secondly, if it is combines legislation they are attempting to use, then one of the factors to be taken into consideration, in paragraph (d), is:

the effect of the acquisition or establishment on competition within any industry or industries in Canada.

I would interpret that to mean, "If it is going to have an adverse effect on competition we will not set up a competitor, and we will not grant this privilege."

Mr. Gualtieri: May I make a comment on that criterion? I know this had caused some confusion. What lies at the base of that factor is that increased competition—and I want to underline the word "increased"—can be a benefit from foreign direct investment, and it was felt that this bill should recognize that fact in assessing whether or not the particular transaction will be of significant benefit to Canada. If a particular acquisition reduced competition unduly, that would be a matter for the combines law. However, let us assume that the acquisition was neutral, for example, or in fact increased competition in Canada. In the case of neutrality, this bill would look at the acquisition, assuming, of course it is, by a foreigner, and say, "It is neutral, so we don't give him any plus points for the impact on competition. But he is going to increase employment, he is going to introduce a new product line, he is going to develop Canadian sources of supply and train Canadian managers. These are all pluses and they seem to add up to a significant benefit to Canada." In other cases the acquisition may in fact increase competition in Canada, and there may be a neutral effect in the other factors. If the increase in competition is in an industry in which competition is an extremely important factor, that in itself might be sufficient to tip the acquisition in terms of balance.

Senator Molson: On this point I would like to ask this question. What basis is there for judgment on the effect on competition? What are you going to use for the criterion? Where is the basis of this? You say it may be beneficial. Of course it may be beneficial, I agree; or it may not be. On what is the judgment going to be based in this case? How do we get a point of departure to judge this?

Mr. Gualtieri: I am not an economist who is well versed in the question of industrial organization, but my understanding is that, for example, in dealing with competition policy there are some fairly clear tests that have been developed in terms of concentration ratios, for example, which are used by our own combines people, and which, of course, are used by combines authorities in other countries—in the Community, in Britain and in the United States. I am afraid I cannot be more precise than that, but I believe there are some tests of an objective nature.

Senator Molson: There are, but in most cases they end up in the courts. I say "most cases", but perhaps that is too sweeping. A great many cases will end up in the courts, because they are matters of judgment. There are some guidelines, as you suggest, but they are not necessarily acceptable to everybody concerned; so, again, there is the possibility of a very great disagreement on whether the effect on competition will be of significant benefit or not.

Senator Cook: The judgment is made before the event.

Senator Molson: Yes.

Senator Cook: The minister makes up his mind before he has any idea whether it will be beneficial or harmful to competition.

The Chairman: Perhaps we have taken some of these questions as far as we can without getting the minister here. It seems to me that something more would appear to be needed in these factors, such as more flexibility by retaining more discretion in the minister. Otherwise, how does a non-eligible person know that he has any position, that he can fit into the factors? He may make a determination that, since these factors are exclusive and he does not fit into them, he does not need to apply. If any person were seeking legal advice he would be told to apply in every case. I do not know how you interpret it. On a subjective judgment, which the minister has, how are you going to interpret that in advance? Is there any way in which we can make it less of a subjective judgment?

Senator Connolly: In other words, to have tests spelled out.

The Chairman: Yes. Senator Molson raised a point on competition. What are the tests? I know that the combines people have administrative rules that they follow, but that is for the purpose of administering the combines legislation.

Senator Molson: And it ends up in the courts.

The Chairman: It ends up in the courts.

Senator Molson: I was also thinking of the application of this principle in the United States, where some of us have had some experience. I see this as providing more complications now than when I first read it. The effect on competition is a very broad and argumentative subject.

Senator Cook: There is no way in which you can fault the minister. If he makes a decision under paragraph (d) there is nothing you can do about it. You can argue until you are blue in the face, but there is the fact.

The Chairman: The point there is that if the minister recommends to the Governor in Council against the particular proposal and the Governor in Council accepts the recommendation, that is the end of the road, there is no right of appeal.

Senator Flynn: What happens, then, after the Governor in Council decides to refuse?

The Chairman: I have some ideas about what might happen.

Senator Flynn: I find nothing in this bill that says what will happen.

The Chairman: The idea I have—and I only throw it out as an idea; and Mr. Gibson or Mr. Gualtieri can wrestle with it—is that when you get to the end of the road the Governor in Council has said, “No”, and that is the end of this legislation. But is it the end of government policy?

Senator Flynn: If the group or company acquires just the same, notwithstanding the decision of the Governor in Council, what happens? I find nothing in here about that.

The Chairman: Has the government tied its hands, if it gets to the stage of the order in council and the answer is no, that it cannot evolve policy and legislation to permit what is being sought to be done—and I am sure they can.

Senator Walker: There can be a private bill in the Senate.

Senator Flynn: I find nothing in here saying that if you do not give notice to the minister and if you do not supply the information, that is an offence.

Mr. Gualtieri: Under clause 20 (1) the government can go to the courts for an order to render the acquisition nugatory.

Senator Flynn: That is good. I am very glad to have this answered because this shows that it is purely civil rights. Up to there, there is no offence.

The Chairman: That part of it is civil.

Senator Flynn: Yes, that part of it is civil and there is nothing that is described as a criminal offence if, after the Governor in Council has said no, you apply the control just the same.

The Chairman: But this provision that Mr. Gualtieri referred to is one where the non-eligible person, or the group of persons any member of which is a non-eligible person, has made an actual investment, by reason of the circumstances of which et cetera, this is really in violation of the bill. They can stultify, or get an order which would negate the possession of the investment, under clause 20. But the point I was making was exactly the opposite, that is as to the discretionary authority of the minister and the government, notwithstanding that I have come to the end of the road and I have been ruled out, that the government can change policy and can operate outside the scope of this bill, certainly by legislation—and maybe the minister can by discretion. Now, what have you to say to that, Mr. Gualtieri?

Mr. Gualtieri: I would say that, of course, the government is answerable to Parliament and, presumably, an acquisition which clearly has brought no demonstrable benefits would create some difficulty for the minister and for the government. There has to be a case which is defensible in public, I would have thought; and, indeed, there are provisions in the bill for two factors which might be helpful, I would say. One is that the minister does have the authority to publish undertakings which the company makes, provided that that publication will not prejudice the competitive position of the company involved. Secondly, of course, there is provision for the submission of an annual report to Parliament on the operation of the proposed act. I guess one cannot rule out arbitrary or irrational behaviour in the abstract, but I would have thought that it is not part of the operation of policy.

The Chairman: What you are saying is that the minister exercises his authority under these factors and there is no provision in the bill

under which the person who has been affected can challenge the exercise of his discretion.

Mr. Gualtieri: That is correct, sir.

The Chairman: But quite apart from that, is the minister prohibited under this bill, after all the procedures have been followed, from making a decision outside the bill, on a question of public policy?

Mr. Gualtieri: Mr. Gibson can explain this law to you.

Mr. Gibson: Mr. Chairman, I think it comes back to the point where you said, quite correctly, that the factors listed here are exclusive, in clause 2(2). The minister must reach his decision on "significant benefit to Canada" on the basis of those factors. He then must make a recommendation to the Governor in Council, which accepts or rejects that advice, and in the event that it rejects the advice, saying that there is no significant benefit to Canada, that is the end of the matter. There is no appeal from that decision. It is an administrative decision in that sense. There is no basis, after that decision is taken, for undoing the decision. There is certainly nothing provided in this law for undoing it. If, at that point in time, the applicant, with or without the consent of a particular minister, chooses to ignore that decision, he does so at his peril under this law.

Senator Flynn: But does it make it a crime?

The Chairman: We have made ministerial decisions, Mr. Gibson, that have no basis in law, is that right?

Mr. Gibson: If you are suggesting that we cannot outlaw illegal decisions, I would agree with you. These things happen in government circles, and I suppose in other places also from time to time, just as the best of us will, and nothing can affect them nor any other law, unfortunately.

The Chairman: What I am looking for is: Do you consider that there is scope outside this bill for the minister enunciating policy that is not covered by the bill? If you proceeded under the bill, the answer would be no? Have we taken away any of the discretion that the minister would have? Obviously, we have not taken away any discretion of legislation, for Parliament can always legislate, even in a particular case; but I am wondering whether there is an area outside the prohibitions.

Mr. Gibson: I do not believe so, sir. I agree with your view that the factors enumerated are exclusive and that the minister in relation to the acceptance or rejection of the acquisitions or establishments is limited within the terms of this bill—subject only to other legislation.

The Chairman: We have certainly shaken this one a lot, but possibly the procedure of *mandamus* might still be open.

Mr. Gibson: I have no doubt, sir, that *mandamus* or a proceeding under the federal court would be open to an applicant who felt that the minister had improperly exercised his function and had made a

ruling on the eligible or non-eligible status of an applicant—on certain factors such as that. I just give this as an example.

The Chairman: As long as you can say that it is not a discretionary decision that is made.

Mr. Gibson: Yes.

The Chairman: If it is not a discretionary decision and you think he has made a wrong interpretation under the question of fact, then *mandamus* would be open?

Senator Cook: You would not have much hope of success and how would a court rule on paragraph (d), before the industry had even started, as to whether it was going to be a benefit or not?

The Chairman: Yes, I only wanted to be aware of it.

Senator Buckwold: I have not read the act, as I got it only this morning. Does the minister have to outline in detail his reasons for rejecting?

Mr. Gualtieri: No, sir.

Senator Buckwold: In other words, all he has to say is "No"—period?

Mr. Gualtieri: That is right, the decision is made. He is not bound to say more than that.

Senator Cook: But not the reason.

Senator Everett: I think the minister has to prepare a summary.

Mr. Gualtieri: Yes.

Senator Everett: To outline his reasons to the cabinet, but he does not have to publicize it.

The Chairman: Yes, Senator Everett, the minister has to make the recommendation to the Governor in Council on all of the supporting documents, so I would assume that in making the recommendation those are his reasons that go forward to the Governor in Council; but there is nothing in the bill.

Senator Everett: I would assume that in the case of an acquisition one would have access to those reasons so that one could, if necessary, go to the courts.

Senator Connolly: He can go to the courts in any event, because it is a discretionary decision.

Senator Flynn: The point is that this decision should be the equivalent of deciding that the order in council is creating an offence, a crime, for anyone not to abide by the decision. And I do not find anything like that in the bill.

Senator Connolly: Let us ask Mr. Gibson on that point. Suppose that an adverse decision is given as a result of the finding of the

board, or the recommendation of the board to the minister, and that the minister follows through and says, "No, this acquisition cannot take place," or "The establishment of this new business cannot take place," but nonetheless the parties go ahead. Is there a crime committed, and is the crime spelled out?

Mr. Gibson: The clause available in those circumstances is not drafted in the terms that one normally describes as being a criminal sanction. It is neither a fine nor imprisonment. The ultimate sanction is an order of a court designed to undo what has taken place.

Senator Flynn: It is purely a question of civil remedies.

Senator Connolly: Mr. Gibson, if that is the case, how do you then say that you are founding this bill on criminal law? Is it because of the combines factor?

Mr. Gibson: There are certain offences provided in the bill in relation to the failure to comply with the requirement to give notice or a demand to give notice. The sanction provided in clause 20, which is not in a normal criminal law form—I agree with the senator on this point—is, in my opinion, not a purely civil sanction. I think that an argument can be made that there is a quasi-criminal element involved in that sanction.

Senator Connolly: But the federal jurisdiction is not based on quasi-criminal jurisdiction; it is based on criminal jurisdiction. If it is only quasi-criminal, do you think that you have the jurisdiction?

Mr. Gibson: Mr. Chairman, the heading in section 91 of the British North America Act, if I remember correctly, is "The Criminal Law". In my opinion, the creation of a fine-or-imprisonment situation does not define the limits of the words "criminal law".

Senator Connolly: It is not essential to the definition of the words "criminal law".

Mr. Gibson: That is my view. Indeed, there are provisions in the Criminal Code and in the Combines Investigation Act itself which go beyond the pure fine-or-imprisonment situation.

The Chairman: Indeed, Mr. Gibson, it might well be that clause 20 is criminal law.

Mr. Gibson: Yes, I would agree with that.

The Chairman: Because it does create an offence, which is the offence of violating this statute.

Mr. Gibson: It provides a penalty for failure to comply, yes.

Senator Everett: Just slightly off the subject, Mr. Chairman, but for my own information, what happens to the exchange of control of a Canadian business from one foreign owner to another foreign owner? Is that subject to review?

Mr. Gualtieri: Yes.

Senator Everett: Why? If an American company bought another American company that had a subsidiary in Canada which could be classed as a Canadian branch, I think you called it, then that would be subject to examination by the Foreign Takeovers Review Board?

Mr. Gualtieri: That is right.

Senator Everett: How would you propose to make that effective as against the operation of the American law, and why would you be interested in doing so?

Mr. Gualtieri: Perhaps I can answer the second part and Mr. Gibson can answer the first part.

The reason why we want to cover that transaction is that the acquirer, say, in the United States, could affect the operation of the business in Canada in terms of the factors that determine significant benefit. The acquirer could affect the employment level: he might want to close the plant down or he might want to expand it; he might want to introduce a new product line or change the sourcing pattern, and so on and so forth. Given that there is scope for affecting the operation of that business in Canada, it was felt that this should be covered by the law.

Senator Buckwold: How could you stop it? Let us take an example. Let us say somebody bought out American Motors in the United States and that there was new control and, with it, new control of the Canadian subsidiary plant here. How could you stop the sale of that asset in the United States? Could you close the plant down here?

Mr. Gibson: The answer is, of course, that we could not stop the transaction that would take place completely in the United States. However, the remedy under clause 20, which renders the transaction, to the extent that it is in Canada, nugatory, forcing a divestiture, would be available in Canada against the Canadian operation.

Senator Buckwold: Using that hypothetical case, how would that in fact operate?

Mr. Gibson: Application under clause 20 could be made to a court, and if it were proven that an acquisition by a non-eligible person of a Canadian business enterprise had taken place, regardless of where the transaction occurred, without approval of the transaction, it would fall within the authority of the court to take any of the actions which are enumerated in subclause (2) on page 31 of the bill.

Senator Cook: It is hard to see how such a transaction would come under subclause (2) (a), (b), (c) . . .

Mr. Gibson: On the contrary, senator. As I think Mr. Gualtieri stated, the effect of the transaction could have significant economic ramifications in Canada.

Senator Everett: I fail to follow that reasoning. I do not see how the exchange of control between two foreign owners could have an effect that is not safeguarded by the bill when they establish the

new business. If the new owner makes a change in the business of his subsidiary, then you are still protected under the bill.

I would like to reserve comment on it to a later time, now that the fact is exposed, but it seems to me to be an unwarranted interference in the rights of a foreign government.

Mr. Gualtieri: Perhaps we can pursue that question, Mr. Chairman, through an example. Let us assume that a transaction occurs in the United States whereby one company takes over another and the acquired company has a subsidiary in Canada and the acquirer then looks at his own industrial capabilities and says, "What we should do is make use of our idle plant in such-and-such a place and provide the components that are now being purchased in Canada to that subsidiary." Thereby, for example, adversely affecting Canadian suppliers. That is just one hypothetical example, but I could multiply the circumstances, if you wish, where we would want to be in a position to say, "Now, just a minute. That is not only not of significant benefit to Canada, but there is a detriment involved there."

What we would like to do in that situation, for example, is to say to the acquirer, "Now, you are proposing to acquire X, Y or Z company with a subsidiary in Canada. We note that you are particularly strong in the technology of "widgets". We have a weak "widget" industry here and it seems to us that there would be some merit in "widgets" being produced here in Canada, if it can be done economically." There would be an opportunity to improve the performance of that subsidiary in Canada.

Senator Buckwold: That is merely wishful thinking, really.

The Chairman: Senator Buckwold, just following your example of the company in Canada having its ownership acquired by a company in the United States, if they did not get a clearance from the minister, then, as Mr. Gibson says, the minister would invoke clause 20 and they would go to the court and get an order directing that these people divest themselves of the ownership within so many days. But suppose they did not.

Mr. Gibson: Mr. Chairman, that possibility has been envisaged. Subclause (3), at the bottom of page 31 and at the top of page 32, would provide that in the circumstances the shares in question—if, in fact, it was shares—could be transferred into the hands of a trustee, who would then have all the power to dispose of them in order to meet the requirements of the court order.

Senator Beaubien: Mr. Chairman, anybody who was going to buy a business in the States and was going to close the plant in Canada would get the permission to buy it and then close it later on, and if he wanted to close the plant, how could you stop him?

The Chairman: I think there is a great deal in that.

Senator Cook: Yes, let us take another application, Mr. Chairman. Let us say that I am a foreign investor and I am thinking of putting a couple of million dollars into business in Canada and, having met all the tests, I do so. Then I want to retire, but under this I find I cannot sell to another of my countrymen, or somebody

of that nature, unless he also meets the tests; I can only sell to somebody in Canada. So, how would I like to put \$10 million into an enterprise in Canada and then find that I am locked in because I want to sell to another American company, or another American investor, and the government here prevents my doing so?

The Chairman: You would have to find a Canadian investor.

Mr. Gibson: There is nothing to prevent a foreigner from purchasing the company, provided he meets the test.

Senator Cook: But one cannot be sure of that in advance.

Senator Molson: What happens, Mr. Chairman, if the deal concerns the assets of a company and not the shares? Perhaps I should know that, but I do not. Let us suppose that XYZ company buys ABC company in the States and they do not acquire the subsidiary in the way we are contemplating, but they buy the assets of the subsidiary company in, for example, Stratford, as you said. How do you control that?

Mr. Gibson: In precisely the same manner. At least, we contemplate controlling it in precisely the same manner.

Senator Molson: So it is the purchase of either the shares or the assets of an undertaking?

Mr. Gibson: Yes.

The Chairman: You will find that on page 6, in subclause (3).

Senator Desruisseaux: Does that include bankrupt assets?

Mr. Gibson: The act extends simply to Canadian businesses, and the status of the company, whether in bankruptcy or otherwise, would not be relevant.

Senator Everett: In connection with the sale by one foreign corporation to another foreign corporation in which they fail to give you notice, as required by the act, what rights do you then have to take action?

Mr. Gibson: The law provides, firstly, that a demand could be served requiring *ex post facto* that they give notice to comply with the provisions of the act. In the event that they continue to ignore the act, the transaction, to the extent that its results fall within Canada, or the Canadian proportion of those results, could be reviewed by the court and an order could be made requiring that the Canadian assets or the Canadian shares, whichever it happened to be, be sold off to an eligible buyer.

Senator Macnaughton: Mr. Chairman, I can foresee the situation where a foreign owner might simply say, "Just lock the factory and forget about it!"—as was done in Cuba.

The Chairman: Well, we have concentrated this morning on certain very important elements of this bill, which I do not think we have exhausted by any means. There are many other aspects of this

to be considered. But it ended up that we had Mr. Gibson on the carpet while Mr. Gualtieri came here all ready to instruct us. I am afraid, Mr. Gualtieri, you will just have to return another time so that we can start moving ahead.

However, Mr. Gualtieri used one phrase that I have been thinking about for some time. It is important, and I should like him to think about it and be ready to deal with it next time. The words "significant benefit" strike me as being quite a mouthful and can have several meanings. What precisely do they mean? How do you interpret them? If you were to take a negative approach and use, for instance, instead of "significant benefit" the word "detrimental", which Mr. Gualtieri used on one occasion to describe the situation, would it be more meaningful? In other words, if in considering the establishment of this particular enterprise, instead of using the words "significant benefit," you were to use the word "detrimental" to some other operation—if the approach were that the factor to be considered was whether this establishment was detrimental, it seems to me that it would be easier to interpret this than those high-sounding, mysterious, and, to me, meaningless words, "significant benefit". It might make it less of a subjective judgment if the minister had to make a finding that something was "detrimental", because "significant benefit" is purely subjective. I am not making a pronouncement on the law, but I am asking Mr. Gualtieri and Mr. Gibson if they will think about it and what would be the obstacles to and the difficulties in administration of this kind of approach?

Senator Desruisseaux: Mr. Chairman may I ask a question related to what we have been considering this morning? I should like to know whether this subject matter has been placed on the agenda for the federal-provincial conference presently being held?

Mr. Gualtieri: I am afraid I do not know the agenda for today's conference.

Senator Desruisseaux: Could you find out?

Mr. Gualtieri: I will inquire.

The Chairman: At this stage I should like to draw the attention of senators to the fact that the sets that you have before you contain the only material available to us at this stage. Therefore, if you lose them or misplace them there will be considerable difficulty in replacing them. Therefore, I suggest that you take them with you when you leave.

Senator Molson: Would it result in a significant loss to the country?

The Chairman: Well, I think it might.

Senator Molson: Or would it be detrimental?

Senator Beaubien: Mr. Chairman, what safeguards are there in the bill for companies such as the CPR? I am thinking of companies that might be deemed to be foreign controlled, such as the CPR. What guarantee or protection do they have? Do they have to appeal

to the board if they want to buy anything or change anything? Is there any protection for them?

Mr. Gualtieri: I am not at all sure that a company like the CPR would be deemed to be foreign controlled. The question as to whether it is foreign controlled is one of fact.

Senator Beaubien: But the fact is that 50 per cent of the shares are foreign controlled.

Mr. Gualtieri: That does not mean that the company itself is foreign controlled.

Senator Beaubien: No, and I do not think it is at all, but I thought that by the definition in the act it would be.

Mr. Gualtieri: No. The act says that in circumstances like that, where the shares are widely-held, you look to the board of directors as the controlling organ of the company, and provided that no more than 20 per cent of the board of the company is composed of non-eligibles, then the company would be Canadian controlled.

Senator Beaubien: Then the CPR would simply be Canadian, and there would be no problem?

Senator Buckwold: Does it follow, then, that any company could suddenly change its board of directors?

Senator Beaubien: That would not be very difficult.

Mr. Gualtieri: I was not making a pronouncement on the CPR's eligibility or non-eligibility because I do not know the facts there, but I was simply explaining the bill as I understand it. But this would only extend to those companies the shares distribution of which is very broad, and you could not really find a controlling shareholder or group of shareholders. I think CPR would qualify under that.

Senator Molson: Just one more question, Mr. Chairman. When I asked about acquiring assets earlier, I meant to follow that up by asking what is the constitutional aspect of the bill in that one facet insofar as it deals with property in a province. Supposing that instead of the control of a company in Canada the assets of the company are bought and are in a province, what is the constitutional aspect of this bill, then, with regard to that provincial property?

The Chairman: That would come up, of course. This could only be done by an order of the court, as I understand it. Is that not correct?

Mr. Gibson: That is the divestiture aspect; yes.

The Chairman: That is right.

Mr. Gibson: I think, though, Mr. Chairman, that whether the shares or the assets are physically situated within one province, the constitutional issue would be the same.

Senator Desruisseaux: Mr. Chairman, in view of the references made to the meetings of the committee of the House of Commons in connection with this subject, will the proceedings of that committee be made available to us?

The Chairman: We asked for a list of whatever material has been presented to the committee of the House of Commons. We consider that it should be available to us. I would prefer to have the department make it available, rather than go to the House of

Commons committee and ask, please, will they let us have it. However, we should have it soon.

Mr. Gibson has undertaken to obtain for us the transcription of the legal views which were expressed to the Commons committee with respect to the constitutional question. We would like to have all that material for next time, if we could. That means next Wednesday, when the committee will meet at 9.30 a.m.

The committee adjourned.

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FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 3

WEDNESDAY, MAY 30, 1973



Complete Proceedings on the Examination of the
structure, policy and operation of the
Export Development Corporation

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate,
Wednesday, May 16, 1973:

The Honourable Senator Martin, P.C., moved, seconded
by the Honourable Senator Molgat:

That the Standing Senate Committee on Banking, Trade
and Commerce be authorized to examine and report upon
the structure, policy and operations of the Export Develop-
ment Corporation.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate

Minutes of Proceedings

Wednesday, May 30, 1973.

Pursuant to notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to examine the structure, policy and operation of the Export Development Corporation.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Buckwold, Connolly (*Ottawa West*), Cook, Flynn, Gélinas, Haig, Hays, Laing, Lang, Macnaughton, Martin, Molson, Smith and Walker. (17)

Present, but not of the Committee: The Honourable Senators Heath and Lafond. (2)

In attendance: Mr. R.L. du Plessis, Acting Parliamentary Law Clerk, Department of Justice.

The following witness was heard:

Mr. H.T. Aitken, President,
Export Development Corporation.

In attendance on behalf of Export Development Corporation:

Mr. T. Chase-Casgrain, Vice-President;
Mr. S.A. Gilles, Secretary;
Mr. A.E. Bowling, Comptroller-Treasurer;
Mr. P. Wheelock, Manager,
Foreign Investment Insurance;
Mr. J.R. Hegan, Manager,
Policy Planning & Research.

It was *Resolved* that the usual number of copies of the Proceedings of this Committee be printed.

It was *Resolved* that the transcript of today's evidence be submitted as the Report.

At 10:45 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

Report of the Committee

Wednesday, May 30, 1973.

The Standing Senate Committee on Banking, Trade and Commerce has in obedience to the order of reference of May 16, 1973, examined the structure, policy and operation of the Export Development Corporation and submits the transcript of the evidence taken as their Report.

Respectfully submitted.

Salter A. Hayden,
Chairman.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, May 30, 1973

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to examine and report upon the structure, policy and operations of the Export Development Corporation.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, the first order of business this morning is to get what information we can in our study of the operations of the Export Development Corporation. This was a special reference to this committee, as you will recall, and we have a number of representatives, including Mr. H. T. Aitken who is well known to us.

Now, Mr. Aitken, would you care to take over at this time? We will have a short opening statement, and then you can go ahead and tell us about the scope and the operations of the corporation to which we have just given some money. We would like to know what ideas you have in connection with it, and how long that money is likely to last!

Mr. H. T. Aitken, President, Export Development Corporation: Mr. Chairman and honourable senators, the Export Development Corporation is the successor to the former Export Credits Insurance Corporation which started in 1945. The Export Credits Insurance Corporation and the Export Development Corporation both provide insurance against non-payment by foreign buyers. We provide export credits insurance coverage. We insure foreign accounts receivable. That is the first thing we do.

Secondly, we provide financing for major capital projects abroad where long terms are required, that is to say terms in excess of five years. The Canadian chartered banks will generally lend up to five years, but beyond five years, let us say for seven, eight, ten or fifteen years, there is no source of funds other than the Export Development Corporation to support major capital projects abroad where the foreign buyer wishes to purchase major capital equipment in Canada.

The third thing we do is to provide foreign investment insurance. If a Canadian company wants to establish a branch plant in, for example, Mexico, we can insure him against political risks involved in his investment abroad. We can insure him against expropriation or confiscation or against the inability to transfer profits or to repatriate his capital.

In the insurance field we have insured \$4.5 billion worth of exports over the past 28 years and we are modestly in the black; in other words, we have cost the taxpayer nothing. Our premium income, less our net losses and expenses has left us in the black. We have a reserve which is equivalent to about 2 per cent of our current outstanding liabilities.

In the long-term financing field we have signed loans in excess of \$1 billion, and we have had no bad debts. We have had to agree to a few roll-overs, but we are in the black.

We lend at competitive interest rates, but we try to lend at more than the cost of money to us. Our long-term approach is to try to lend at about one-half of 1 per cent above the cost of money to the corporation. We borrow from the Consolidated Revenue Fund at rates, established by the Minister of Finance, which are set quarterly. Currently our borrowing from the Treasury costs us just below 6 per cent, and the average of our current loans is in excess of 7 per cent. So we are making about 1 per cent. It costs about one-quarter of 1 per cent for us to operate.

We have signed about 145 loan agreements in about 40 countries. We are not restricted to developing countries as compared with developed countries; we can lend anywhere. We have lent to the United Kingdom, and we have lent to Chile. As I say, we can lend anywhere we are satisfied the project is a viable one, where Canadian capital equipment can be sold on competitive terms and where the price, quality and delivery of the equipment sold is competitive internationally. We do not put up the money just to get the business; we put up the money to facilitate sales by Canadian exporters and Canadian manufacturers of capital equipment.

In the case of the foreign investment insurance field we have a ceiling there of \$150 million and we can insure only—as a matter of government policy and this is not set out in the Act—investments in developing countries; that is to say, countries that are listed in the so-called DAC list—the Development Assistance Committee of the OECD. We could not insure an investment in France or Germany, but we could insure one in Brazil or Mexico. The ceiling of liability which the corporation can take on in the export credits insurance field is \$1 billion, divided as follows: \$500 million at the authority of the corporation's board of directors; and \$500 million where the government can tell us to insure; we are therefore the "post office" through which the latter are handled. The wheat sales made to the Iron Curtain countries are handled through the Export Development Corporation under the government's \$500 million ceiling.

In the 28 years we have paid out some \$22 million in claims and we have recovered some \$16 million, so we have a net loss position of \$6 million. As I told you, if you take our premium income, less our \$6 million losses, less our operating expenses, you will find we are still in the black.

The ceiling for long-term lending was \$850 million and Bill C-3, which the Senate passed on April 18 last, increased that ceiling to \$1.5 billion. We have projects before us now for consideration which could increase our total signed contracts to something between \$1.4 billion and \$1.5 billion. But that ceiling, as established in the act, relates to obligations of foreign customers, or foreign borrowers. The amount of contracts we can sign is, of course, considerably in excess of \$1.5 billion because that limitation is in respect of obligations given to us by foreign borrowers, and at present that total is between \$700 million and \$800 million, so we still have some scope.

I think that is a thumb-nail sketch of what we do.

The Chairman: Any questions?

Senator Flynn: I was not too clear as to exactly how you proceed when you mention investments by foreign borrowers. I thought the transaction was with, let us say, a local manufacturer who would transfer to the corporation his contract or his claim, and that, in fact, the loan is made to local manufacturers.

Mr. Aitken: The loan is made to the foreign borrower. We lend money to, say, the PTT, the Public Telephone and Telegraph System of Turkey. Turkey then places an order with Northern Electric, and when they ship the goods, we pay them on behalf of Turkey. Then we take notes from the Turks and they pay us back over a ten or twelve-year period.

Senator Flynn: I thought the first transaction was with a local manufacturer.

Mr. Aitken: We deal with a local manufacturer when he is extending the credit. We insure him when he is extending the credit. If the foreign buyer does not pay him, then we pay him 90 per cent. But that is insurance. In the long-term financing we lend the money to the foreign buyer. Then, on behalf of the buyer, we pay the Canadian exporter cash.

Senator Walker: What arrangements have you made in the case of default in the loan? Have you any guarantees that you will get it paid back? It is awfully hard to sue in Chile.

Mr. Aitken: In the case of Chile, Chile sought accommodation from the world when she ran into balance of payments difficulties; and we in Canada agreed to roll-over what was due from Chile from the period November 1, 1971 to December 31, 1972. During that period Chile was obliged to pay under loans made to borrowers in that country about \$3 million.

Senator Walker: You mean the government was obliged to pay?

Mr. Aitken: No, the borrower. The government was required to provide the exchange to transfer, but the borrowers in Chile, and there are three of them—Industrias Forestales, a pulp and paper concern, the second, a company known as C.M.P.C., a Spanish name which means a manufacturer of cartons, and the third, a chemical company—have borrowed money from EDC to buy capital

equipment in Canada. During the period November 1, 1971 to December 31, 1972 their obligations totalled \$3 million. They can pay, but Chile lacks foreign exchange, so Chile asked the world to agree to a roll-over to defer part of those obligations. In fact, what we did was to agree to defer \$2 million of the \$3 million. So Chile paid us \$1 million cash, and we agreed to roll-over \$2 million on the basis that they do not pay anything for about two years, and then they have five years to pay off the \$2 million.

Senator Walker: In other words, you have no security and no guarantee, and no procedure by which you can enforce the repayment of loans that go in default?

Mr. Aitken: That is not quite right, senator.

Senator Walker: That is the question I asked. Would you address yourself to answering it, please?

Mr. Aitken: In the case of Industrias Forestales, S.A., we have the guarantee of CORFO, the Corporación de Fomento de la Producción, which is the industrial development bank of Chile. If Industrias Forestales, S.A. could not pay we would call on CORFO to pay. That happened in the early stages of the loan, which was made in 1961. We have the guarantee of CORFO in that particular case. We try to get the best security we can, so that in the event the borrower cannot pay we go to the government, or an entity of the government, or to the central bank. We always try to get a guarantee for every loan we make.

Senator Walker: That is what I asked you. Then you always do support that loan by getting a guarantee, do you?

Mr. Aitken: Generally, yes. In over 90 per cent of the cases, yes.

Senator Walker: That is the question I asked.

Senator Flynn: Somewhere reference was made—I do not know where, or by whom—to your corporation financing the purchase by Venezuela of some old planes from the Department of National Defence. Would you tell us about that?

Mr. Aitken: As you know, the Department of National Defence bought some planes known as CF-5s. I understand they are not using them all, and they had some that were surplus. The Department of Trade, Industry and Commerce managed to interest the Venezuelan government in these planes. EDC is not set up to finance just miscellaneous sales of obsolete or excess equipment. We are supposed to finance new capital equipment sold abroad, so as to provide employment in Canada. We said that if a new order were to be placed for planes equivalent to the proposed sale, then we would finance the proposed sale, looking at it as though we were financing new production, one balancing the other.

In fact, that is what we did. We financed the sale of these planes to Venezuela, and with that money the Canadian Commercial Corporation, acting on behalf of the Department of National Defence, placed orders with Canadair to an equivalent value, or I believe, more than the value of those planes. The complaint of the

Auditor General in his annual report was to the effect that the CCC, the Canadian Commercial Corporation, in placing such an order, did not first of all go to Parliament to get approval. That, of course, had nothing to do with us; we financed the sale. If I give a company a cheque and they run off to Mexico with it, I cannot help it.

Senator Flynn: Normally, when there is a surplus, the government would sell that at an auction, the proceeds of the sale would have to be reported and could not be used by any department, could not be appropriated for the purposes of any department without Parliamentary approval. That is probably the complaint, if I understand it, of the Auditor General.

Mr. Aitken: I think that was his complaint.

Senator Buckwold: Could you tell us the number of applications that are rejected, and the kinds of situation that created those rejections?

Mr. Aitken: It is difficult to say in quantitative figures how many rejections there have been, because the procedures that are generally followed are that an exporter will telephone us in the first instance to say, "I am considering the possibility of making a sale to such-and-such a country. Is that country eligible for your lending?" We would then say yes or no. Sometimes there is a borderline case. It might be a very attractive sale, in which case we might be persuaded to lend to a country which is not 100 per cent creditworthy. If the country is eligible, the application will say, "We want to sell them locomotives," or perhaps a satellite station or ships, something clearly eligible for our financing, and then we will agree. If he says he wants to sell nuts and bolts, we do not finance that; we finance capital equipment.

First of all, the country has to be eligible; then the commodity has to be eligible. Then we ask what the project is, whether it is a viable project, whether feasibility studies have been made to show that the project, if it comes to fruition, will in fact earn money so as to pay for itself. We further have to ask whether the country is one where we are satisfied we can get paid, where their foreign exchange earnings are such that we are reasonably satisfied that over the period of credit we will get paid. Any discussion may fall down on any one of these points. It may never reach the stage where we get a formal application for the financing. It is really rather difficult to say to what degree applications have been rejected.

Senator Buckwold: When that stage is reached, most of them would be acceptable?

Mr. Aitken: Yes, sir.

Senator Buckwold: Other than financing, what would make a country ineligible?

Mr. Aitken: Only financial considerations, as long as the project were a viable one and the equipment qualified.

Senator Buckwold: I was thinking of the country. Have you a list of eligible countries? That is what I understood a little earlier. What makes a country eligible?

Mr. Aitken: As long as it is creditworthy, if it can pay; I am not concerned with its ideology at all.

Senator Buckwold: That makes no difference?

Mr. Aitken: No difference at all.

Senator Lang: Is that the case in India right now on all capital equipment?

Mr. Aitken: No. We have financed projects in India totalling \$120 million.

Senator Lang: I understand there are certain injunctions on the export to India of some credit materials. Is that not correct?

Mr. Aitken: I believe that is true, but we have not any responsibility for or concern in that regard. We tell the exporter that while we are prepared to finance a transaction, it is up to him to get the export permit, if one is required. Our agreeing to finance something does not in any way connote any governmental approval of the particular export. If a permit is required, the exporter must deal with the appropriate authorities in the Department of Industry, Trade and Commerce, and the Department of External Affairs.

I believe there is an inter-departmental committee that supervises the granting of export permits; it is nothing to do with the Export Development Corporation. Our approval of a particular export does not connote any governmental approval of it under the rules that guide the approval of export permits.

Senator Lang: With respect to your bad debt experience and how that bad debt experience might relate to your volume of lending, there must be some way that you relate bad debts and banking to your total amount of lending, and how your experience compares with an ordinary lender, such as a bank.

Mr. Aitken: We have signed contracts totalling in excess of \$1 billion. We have agreed to roll-over and we have no bad debts to date; we have not written off anything. I am speaking now of long-term financing. As I told you, in the export credits insurance field, we have had \$22 million in claims.

In the long-term financing we have no bad debts but we have agreed roll-overs of about \$26 million out of the \$1 billion. Of the \$26 million, so far \$6 million has been paid off, so about \$20 million which was due during the period of the loan, was deferred to be paid over future due dates. We did it for India; for Pakistan; one for Liberia, one and a half million dollars; for Chile; for the Philippines; and the last one was Egypt.

Senator Lang: Would you say that your bad debt experience has been better than that of the conventional lender?

Mr. Aitken: You really cannot compare it, because the conventional lender goes up to 2, 3, 4 or 5 years. Our loans are made on an average of about 8 to 10 years, going from about 7 years generally to fifteen years maximum, so it is between 10 and 12

years. So you really cannot compare what we do. I think our experience has been outstanding.

Senator Lang: What I am really trying to get at is, if your experience has been so good, are you performing your function adequately?

Mr. Aitken: Oh!

Senator Lang: Are you taking the risk that you were set up to take? Are you being too conservative? Are you in an area where we should be using the conventional lender?

Mr. Aitken: Perhaps we are too conservative, but I do not think so. As I said earlier, we try to lend where the project is viable, where there are exports of capital equipment and where the buyer can pay. Sometimes it is a question of judgment as to whether the buyer can pay. We do not like to lend money where clearly we will not get paid, and we hope we have never done that.

Senator Lang: Wouldn't your experience indicate to you that you are being too conservative in your approval of loans? If you have that high a favourable ratio, are you performing the risk functions for which you were constructed?

Mr. Aitken: Senator, that is a good question. We do not think so. By the way, if I might explain some of the procedures, as I explained earlier to a senator on my far left, the procedures are to ask: Is the country eligible? Is the project eligible? Is it a viable operation? Once we have assembled all the information required, we then come to our board recommending that we take a position. Sometimes it is a recommendation that something not be done; on the other hand, sometimes it is a recommendation that something be done. By and large, in our experience, the board goes along with us.

Our board is made up of twelve members—7 from the Public Service and 5 from the private sector. They meet once a month to consider applications from exporters and foreign borrowers for loans. It may be that we have not done business which we could have done. Again, it may be that if we had done that business we might have had more losses. We are not trying to subsidize exports; we are really trying to break even over the long term. In the export credits insurance field we have broken even; we are modestly in the black. In the long-term financing field we are solidly in the black. But, then again, we have these \$20 million of rollovers. Provided they are paid up, we will continue to be in the black, but if they are not paid we will have to write them off. We hope we will not have to write anything off.

Senator Lang: I wonder if I might ask one other question? In the foreign export field you are basically in competition with your counterparts in the world field, I assume.

Mr. Aitken: Yes, sir.

Senator Lang: In many of these loans, you are aware that the rate of interest is what is called the cosmetic rate. There are other

factors involved that in fact make the interest rate of your competitor lower than your interest rate. If my little knowledge is of any value, I think the cosmetic loan situation as utilized in other countries is an effective competitive device against Canadian exports, and it is a practice that, by and large, you pretend is not there. We may very well be losing business because of the interest rate factor competitively between yourselves and, say, your counterpart in the U.K. or France or anywhere else. Would you care to comment on that.

Mr. Aitken: Mr. Chairman, what the senator says is a very valid observation. The only thing I can say in response is that in our experience the foreign buyer decides what he wants to buy. Then he shops all over the world for the best terms, pitting one country against the other, trying to get competitive prices, competitive interest rates, competitive service; and then he goes ahead and buys from the person he intended to buy from in the first instance. So, while it is true that other countries make up the so-called cosmetic rate of interest, there is no doubt that if they quote a 5½ per cent rate of interest and money is costing 8 per cent, that 2½ per cent differential is built into the price, because they just could not operate on the basis of subsidizing their exports on a continuing basis. In the end, there are the international protective organizations such as the GATT Agreement, where practices such as those we have been discussing are frowned on and are discussed openly internationally. I think that by and large EDC Canada is competitive on price, quality and delivery and in interest rates and credit terms too.

The lowest rate at which we have lent is 6 per cent. All the loans prior to the EDC being established—that is, before October, 1969—were made at 6 per cent, and that was when money was costing 4½, 5 and 5½ per cent. Since then, as you know, interest rates have gone up, and while we try to lend at interest rates above the cost of money to us, on occasion, because of international competition, we have lent at rates below the cost of money to us; but, on the average, our return is just over 7 per cent and our cost is just below 6 per cent, so we are in the black.

Senator Flynn: The cost of money to you is determined by the government?

Mr. Aitken: Yes, sir, generally; that is, about 90 per cent of what we have borrowed and lent has been money from the treasury, but we have also gone into the marketplace.

Senator Flynn: How does the government determine its rate?

Mr. Aitken: My understanding is that the Department of Finance sets the rate to crown company borrowers at one-eighth of one per cent above the cost of money to it, for a specified period. They lend on terms of one to five years, five to ten years, ten to fifteen and fifteen to twenty years, and they set the specific rate of interest for each category.

The Chairman: Mr. Aitken, Senator Lang's question seems to provoke some points, as far as I am concerned. You talk about international credit competition—that is, there are other countries and organizations that are looking to lend money in different areas,

and you are doing the same thing. I take it you limit yourselves, in your loaning of money to say, India, in relation to some production or other of the commodity in Canada?

Mr. Aitken: Yes.

The Chairman: Wouldn't other international organizations do the same thing?

Mr. Aitken: It is true, sir, they do. But just as an example of how competitive we are today, because of the devaluation of the American dollar—and the Canadian dollar follows the American dollar very closely—and because of the revaluation of currencies such as the Japanese yen, the balance in Canada's favour today is, I am told, something in the order of between 15 and 20 per cent. Whereas two years ago we were barely competitive with the Japanese, now we are 20 per cent better on a price basis than they are. This gives us a tremendous advantage internationally. It is true, other countries have organizations very similar to the Export Development Corporation; but we are the only entity in the world that does the three things under one roof; that is, export credits insurance of suppliers' credit, long-term financing of buyer credits, and foreign investment insurance. We are the only entity in the world that provides the three services in one corporation. In the United States, the Export-Import Bank of the U.S.A. provides long-term financing, but its affiliate or associate company, the Foreign Credit Insurance Corporation, provides export credits insurance, and the Overseas Private Investment Corporation provides Investment insurance. You have three entities in the United States doing what we do in one.

The Chairman: Are any of the countries using this means to subsidize exports?

Mr. Aitken: As the senator indicated, it is very difficult to determine.

Senator Flynn: But it is possible?

Mr. Aitken: It is possible.

Senator Flynn: This long-term financing is a rather recent experience?

Mr. Aitken: We started in 1961, twelve years ago.

Senator Flynn: At the beginning you were financing only the purchases?

Mr. Aitken: We were insuring the exports.

Senator Flynn: You were insuring the exports?

Mr. Aitken: That is correct.

Senator Flynn: Coming back to this deal, don't you think in a case like that that the corporation is under undue pressure when it has to deal with the Commercial Corporation or any branch of the government?

Mr. Aitken: No, sir, we were solidly encouraged, shall I say, by Canadair, which was to make the new planes. They were the people, really, who were very keen to have us finance the sale of the old planes, and we were quite prepared to look on the transaction as though we were financing a sale of new planes.

It is the same idea as 25 years ago when we were asked by the City of Toronto to insure the sale of their old red streetcars to Mexico.

We said, "What is the point of that? We are not here to insure just financial transactions. We are here to insure exports so as to provide employment." So we said to the City of Toronto, "If you will agree to buy buses made in Canada, we will insure the sale of your streetcars to Mexico."

Senator Flynn: I can understand the interest of Canadair; that is quite obvious; but the Canadian Commercial Corporation and the Department of National Defence were also very much interested in getting the money this way.

Mr. Aitken: Yes, sir.

Senator Lang: Just trying to get a comparative picture of our performance in your field as opposed to other western countries, can you compare the amount of exports that you finance, expressed as a percentage of our total exports and as compared with what, for instance, the U.K. finances, or France finances, or the United States finances? I am trying to get a picture of what your performance is, relative to our competitors in international trade.

Mr. Aitken: We have facilities today totalling \$3.1 billion to help facilitate exports. That is \$1 billion for insurance; \$1.5 billion for financing; \$450 million for the government to finance; and \$150 million for foreign investment insurance. So you have \$3.1 billion. The U.S. has a ceiling of \$20 billion. But, to compare Canadian figures with U.S. figures, you have to take a factor of 14, so that if you multiply our \$3 billion by 14 you get \$42 billion. The U.S. has \$20 billion, so comparatively EDC is twice the size of the Export-Import Bank of the United States. We have twice the facilities here in relation to what they have in the United States.

At the moment, they are using about two-thirds of their \$20 billion; they are using about \$12 billion or \$13 billion of their \$20 billion. We have signed more than \$1 billion of financing, and we have currently outstanding about three-quarters of a billion dollars in insurance, so we are using more than half of our facilities.

I think the EDC is recognized internationally as being one of the best run organizations in the world to help Canadian exporters.

With regard to our comparison in volume of business with the U.K., for instance, it is difficult to compare, because of Canada's exports; so many are sold for cash. Take all our ores, for example; they are all sold for cash. Most of our wheat is sold for cash.

As you know, 70 per cent of all our exports go to the United States. You do not require financing for sales to the United States. They buy on short-term credit or cash. So the area available for EDC to finance or insure is relatively limited, as compared with the U.K., where everything they export is manufactured or has to be

imported and manufactured and re-exported. They have not the indigenous resources which Canada has, so in the U.K. they insure or finance about one-third of their total exports.

In our business last year we did roughly \$500 million in insurance, and we did about \$300 million in financing. That is \$800 million, but Canada's exports last year were about \$20 billion, so we did about 4 per cent. In the U.K. they do 35 per cent. But, senator, you really cannot compare the two operations.

Senator Flynn: Have you any figures as to the private sector contribution to insurance and financing?

Mr. Aitken: Sir, the chartered banks are ready to provide financing where we will insure, and a lot of our business comes from the banks because an exporter will go into a bank and say: "Here, I have the possibility of making a \$100,000 sale to Mexico. Will you finance it?" So a prudent banker will say, "Go talk to the Export Development Corporation, because if they will insure it, then we will finance it." Because the banker then knows that if the foreign buyer does not pay, we will pay, and we agree to pay the bank directly on instructions from the exporter. If we insure a sale and the foreign buyer does not pay, then the bank knows it is going to get its money.

By and large, the Canadian chartered banks stand ready to finance where we will insure. It is where the banks do not want to finance that we will finance, but that is in the long-term field. However, even in that field the banks work with us. For instance, we are currently negotiating a loan agreement with Algeria. The Algerians are here today. We hope to be announcing on Friday—I don't want to steal Mr. Gillespie's thunder, because he is our minister, but I expect Mr. Gillespie will be announcing an accord with Algeria on Friday which involves EDC funds and funds from the chartered banks. We work very closely with the banks. The banks take the shorter end of the obligations and we take the longer end.

Senator Flynn: My question was really whether the banks and the insurance companies operate in the same field as you do, without you.

Mr. Aitken: In some cases, yes. Not the insurance companies. There is only one insurance company in Canada, called the American Credit Indemnity Company, which insures domestic credit risks and also risks involved in sales to the U.S.A. It insures only commercial risks, not political risks. We are the only entity in Canada which provides insurance for both political risks and commercial risks. Our first political loss, interestingly enough, was in the U.K. It was a sale to the U.K. They cancelled the import licence, and we had to pay the exporter.

The largest single credit loss was also in the U.K. When Rolls Royce went bust we had to pay out \$2 million to Canadian exporters who had contracts with Rolls Royce.

Senator Laing: Mr. Aitken, what adequacy are we going to have in the prospect of development of probably an enormous volume of trade between state traders and our side? I am talking about the

COMICON countries and particularly the buildup of both their public relations with respect to the forthcoming meeting between Brezhnev and Nixon. They are talking about the trade of \$125 billion worth over 20 years. This has been fairly well publicized by both their sides.

Is the legislation under which you operate adequate to enable Canada to participate in this kind of thing, which, essentially, I think, is going to be a barter arrangement? I have it from one of the prospective purchasers of LNG in the United States that they are probably going to pay \$1.45 a thousand. That is pretty unusual when they are paying us 31 cents at the boundary today. I would take it that the machinery and full plants that will be shipped to the Soviet Union prospectively will be at a different price than if they were sold domestically.

I would fear that this could lead us on this continent to an immense amount of new inflationary pressure, but the details, of course, will be done by private firms and by, I take it, Soviet departments within the Soviet.

Now, what adequacy is there, if we are going to get a great splurge of this, because Mr. Brezhnev has said he is going to take the Soviet Union into the western economic world? Whatever that means, I do not know, and probably he will only find out as he goes along.

Senator Flynn: And so will we.

Senator Laing: But what adequacy have we for this sort of thing, should it become an immense influence in the world and an immense addition to the trade presently enjoyed by nations? Because, in my view, it could be fantastically immense.

Mr. Aitken: Just to show you what we have done, I will pick one country, Yugoslavia. It has state trading organizations. We have financed a number of sales to that country over the years. In total, we have financed \$77 million there, starting back with our first one in June, 1969, when we insured a sale of \$9 million worth of locomotives to Yugoslavia's state railways. We have also insured a flight simulator for a DC-9, by CAE of Montreal, to Yugoslav Airlines. We financed some locomotives from Montreal Locomotive Works—one was from General Motors Diesel in London, and the second was from Montreal Locomotive Works. We financed five chemical plants to an organization known as Soda-So from Chemetics International Limited in Vancouver. That is a subsidiary of CIL. They sold five plants valued at \$21 million to five government entities in Yugoslavia. I think we are very well equipped to assist Canadian exporters trading with state trading entities.

It is true there has to be a *quid pro quo*. When General Motors made the sale of locomotives to Yugoslavia they had to agree to buy some Yugoslav hams. But that has nothing to do with EDC; we are just here to help exports. If, on the other hand, the exporter has to do something to help make the sale, then that is fine. But we are not involved in any barter arrangement; we will help it, but we do not take part in it.

Senator Laing: Do you expect this type of trade to develop enormously?

Mr. Aitken: Well, since if you want to sell you have to buy, I would hope that there would be an increase in our imports, thus helping an increase in our exports. If it requires state trading, then I do not see anything wrong with the Communist countries having state trading entities trading with our private importers and exporters. We are here to facilitate exports, and I know that Industry, Trade and Commerce are quite prepared to help our would-be importers.

Senator Laing: If a massive agreement comes to a conclusion between the United States and the U.S.S.R., do you think that there will be a guarantee by the government of the United States in respect of all of those shipments?

Mr. Aitken: To the extent that they are made on credit, yes; but they may be made on a cash basis. You recall that the Russians wanted to buy \$500 million worth of wheat about six or seven years ago, and they wanted credit. Canada agreed to give them a measure of credit for part of the sale. We were instructed to provide insurance on that basis so that the banks would provide the financing. The Russians in fact paid in gold. They paid cash. They bought sterling in London for gold, and they paid us in sterling. So, we were not involved in any credit because they paid cash. To the extent that these discussions between Brezhnev and Nixon result in credit sales, I think the U.S. Government would be involved in guaranteeing the credits.

Senator Laing: Do you have adequacy in your legislation to compete for some of that business against the United States?

Mr. Aitken: Yes, sir.

Senator Connolly: Insuring American exports?

Mr. Aitken: No, Canadian exports. Senator Laing was referring to the forthcoming talks between Mr. Brezhnev and President Nixon, where President Nixon hopes to augment greatly the flow of trade between the two countries; and Senator Laing was asking whether we had facilities in our act to compete with that. I said we had.

The Chairman: But is that a full answer? Do you think the United States and Russia, in making this extensive trade agreement, are not going to define the origin of the products?

Mr. Aitken: I think there may be a sort of overall umbrella protocol; but I expect the details would be worked out between officials rather than at the political level. Just as in the case of the Algerian transaction to which I referred earlier, there was to be an exchange of letters and an aide-memoire signed by the two governments, expressing the basis on which the financing arrangements would be made, but the details of the arrangements are negotiated by us with our Algerian counterparts.

The Chairman: The question, then, would be whether you in Canada could get at the volume of business that may be generated between the United States and the U.S.S.R. You may have the facilities to do it, but are you going to get the chance to do it?

Mr. Aitken: I think so. I think our exporters are very aggressive. Canada's trade commissioner service abroad is without doubt the best in the world. We have the best foreign service of any country.

I go abroad to meet with my colleagues in other countries. We all belong to an organization called l'Union d'Assureurs des Crédits Internationaux, known as the Berne Union. We have our annual meeting in various countries in Europe each year, and I attend representing the Export Development Corporation. It is a technical body where we discuss policies, practices, procedures, premiums, claims, recoveries, et cetera, and when I explain how we go about getting recoveries and how we go about getting economic or credit information on buyers abroad through our trade commissioner service, they say, "Aitken, taisez-vous; you have told us so often that we are tired hearing about it." They are all envious of the tremendous service that EDC gets from Canada's foreign trade service.

Senator Hays: Mr. Aitken, do you think I could prevail on you to run as a Liberal in Calgary South?

Senator Flynn: Why South? Have you good memories of that riding?

Senator Laing: Are you involved in the sale by AECL to Argentina?

Mr. Aitken: Yes, sir, actively.

Senator Laing: Under what terms? This must be a very competitive field.

Mr. Aitken: It is, senator, and we are competitive—out in front. Canada is going to lend Argentina about \$170 million to buy equipment in Canada, backed by the know-how and assistance of AECL, and orders will be placed with companies right across the country from Newfoundland to Vancouver Island with that \$170 million. It will probably be built by Dominion Engineering, but all the other equipment will be placed right across the country. When we finance a sale to, say, Turkey, where the order for \$10 million will be placed with Northern Electric, Northern Electric tells us that they place contracts with 3,500 sub-suppliers. So, where we finance a transaction, the business goes right across the country.

Senator Laing: What are the terms?

Mr. Aitken: It is going to take about five or six years to build the plant, and then they get 15 years to pay after that. So I will be long gone by then.

Senator Laing: What is the rate of interest?

Mr. Aitken: It is a competitive rate; it is in the area of 7 per cent.

Senator Laing: Are there any cosmetics involved in that?

Mr. Aitken: I think that is flat, clean and precise.

Senator Laing: I can quote you on that?

Mr. Aitken: We have not signed it yet.

Senator Flynn: Whether your terms are competitive or not depends, really, on the rate that the government sets.

Mr. Aitken: It depends on what the buyer wants. If Argentina wants to buy a CANDU reactor with natural uranium, then that excludes the United States which sells only enriched uranium.

Senator Flynn: But you will not make a loan on terms that will bring you a loss?

Mr. Aitken: We try not to, and on the average we do not.

Senator Flynn: Your objective is to make a small profit.

Mr. Aitken: Correct, and so we stay modestly in the black.

The Chairman: That is deliberate policy?

Mr. Aitken: Correct.

The Chairman: You are not in the money-making business?

Mr. Aitken: We are not trying to coin the dough; we are trying to stay in the black. As I say, today we are lending on the average at slightly more than 7 per cent, and money is costing us slightly less than 6 per cent, so we are building up reserves in case a particular country is unable to pay us, so that we will be able to finance the loss. As I said earlier, we have not had a loss in the long-term financing field yet, and I hope we do not. We have had to agree to roll over six debts, those six countries where, if we had not agreed to roll over, it could have been said we had a bad debt.

The Chairman: When the money comes to you from the government, when you are repaid . . .

Mr. Aitken: We pay back.

The Chairman: . . . that money has to go back into the Consolidated Revenue Fund.

Mr. Aitken: That used to be the case under the Export Credit Insurance Corporation, because we just lent on government account. As it is now, the EDC operates on its own: we borrow from the government and give them notes; then we lend to the foreign buyers and take the foreign buyers' notes. Whether or not a foreign buyer pays us, we have an obligation to pay the government.

Senator Flynn: Not to refund the surplus you may accumulate?

Mr. Aitken: Oh no.

Senator Flynn: If you were able to accumulate a substantial surplus, you could change the policy of the corporation and lower your rate of interest.

Mr. Aitken: Certainly. We are prepared, where there is an internationally competitive situation and where we are anxious to

get the sale, to lend it at a rate that costs us money, where we may lose a little.

Senator Flynn: But you do not have enough surplus now to do that.

Mr. Aitken: We do it from time to time, but hopefully very modestly.

Senator Lang: I hope not so modestly. I say this because I think we will be faced with a very serious export problem in the years ahead, probably the most critical years to come. I hope EDC will recognize that, in its policies and the responsibilities it now faces to support our exports, even with higher proportions. It is very important philosophically that EDC look at the immediate future in those terms.

The Chairman: You mean, even to the extent that they might not make enough money to meet their notes that they give the government?

Senator Lang: If necessary.

Mr. Aitken: I can assure you, senator, that EDC is very competitive. We are out to get business.

Senator Hays: In your international group you have a certain code of ethics. For instance, I am in the livestock field, and we use export credits. Where you lend money to an exporter for three years and would not extend the period, do you find that the other countries we are competing against live up to this three-year period, or do they extend it?

Mr. Aitken: By and large, I can say they do. You are referring, for instance, to the cattle agreement?

Senator Hays: Yes.

Mr. Aitken: We have an international understanding that we will not insure beyond three years. The only country which has said it will not live up to that is the United States. Everybody else is in accord.

Senator Hays: What about West Germany?

Mr. Aitken: They do not export that much cattle; they are not big cattle exporters.

Senator Hays: We were financing some in East Africa, where we thought we lost the deal to West Germany. The importer said they were getting four or five years. You have a problem with the United States as far as extending up to five years?

Mr. Aitken: Yes. They believe that in certain circumstances it is appropriate for them to go beyond the three years; therefore they will not subscribe to the agreement. However, we are all aware of that, and we are all agreed that where we are competing with each other we will not go beyond three years; if any one of us is competing with the United States, we will match the United States.

Senator Hays: You do that?

Mr. Aitken: Yes.

Senator Walker: Isn't that pretty hard to do sometimes? I remember that India cut off our trade in 1960. I was in Kuala Lumpur and had to come back. Our trade was cut off. The trade of everybody but the United States was cut off in India. The United States extended very easy credit. They are ruthless about it. The only way to get it back was to face India with the fact that we would cut off all the gifts we made to them under the Colombo Plan, and we got it back in about ten minutes that day. The Americans were ruthless there. I suppose they are ruthless everywhere.

Mr. Aitken: They are pretty tough, but we are pretty tough too.

Senator Connolly: Senator Walker was tough.

Senator Molson: He is always tough.

Senator Walker: The Prime Minister was too.

The Chairman: I notice, senator Walker, the witness did not accept your word "ruthless". He said that we are "tough". I take it that is a refinement.

Senator Walker: He did not suggest he was ruthless.

Senator Flynn: He has to be a diplomat; he cannot be quoted.

Senator Hays: Do you insure soft loans too?

Mr. Aitken: No, sir. That is CIDA. The Canadian International Development Agency does three things. First, it lends on terms where the buyer has seven years' grace and another 23 years to pay; they charge a rate of about three per cent. That is one type of loan. The second type of loan is where they lend on 50 years with no interest, and the buyer does not need to start to pay for ten years. A third thing they do is to make grants, where they give the buyer some money, but always to buy equipment in Canada. Those are the three things they do. But that is Canada's aid effort. We are not aid; we are trade.

Senator Hays: How do you determine these periods of three years and five years?

Mr. Aitken: We just follow international custom.

Senator Hays: There must be some formula whereby you say on a certain debt that you will only lend on three years or five years and will not extend that. Have you an amortization of some sort?

Mr. Aitken: It is really the development of international custom over the years. Maybe you could argue it should be only one year, maybe four years.

Senator Hays: What is wheat?

Mr. Aitken: Wheat is a cash commodity, but occasionally a foreign country will ask for credit. If Canada wants to sell wheat and international competition requires it, we give credit, and we insure it, but only on instructions from the government. We do not think it is a proper commercial operation to insure wheat on credit, so we do it only on government instructions and the government carries the risk. I should say that for all the hundreds of millions of dollarsworth of wheat we have sold we have always been paid.

Senator Hays: That is food.

Mr. Aitken: Yes.

Senator Laing: What is the breakdown between the East and West blocs? What are we doing in the East bloc?

Mr. Aitken: The Eastern countries?

Senator Laing: Yes, just the East. Would it be 10 per cent?

Mr. Aitken: In total?

Senator Laing: Yes.

Mr. Aitken: With regard to the financing of capital equipment, we have financed roughly \$1 billion. We did \$77 million to Yugoslavia; to Russia we did only \$5½ million. We have done, say, about \$80 million out of \$1 billion—a little less than 10 per cent.

Senator Flynn: Those are the only two countries?

Mr. Aitken: No, we also did something in Roumania.

Senator Laing: Bulgaria?

Mr. Aitken: No. With Roumania we did \$5 million, a chemical recovery unit for \$2 million and a trisonic tunnel for their aeroplane industry for \$3 million.

Senator Flynn: Czechoslovakia?

Mr. Aitken: We are discussing some transactions right now for Czechoslovakia. We insure exports to them, of course, daily, but we have not financed anything yet. We are prepared to; we think they are quite creditworthy. They pay.

Senator Laing: You made reference to our trade people abroad. I would substantially agree with you; I think a large number of them are superb, but in these Eastern countries we are doing it all from outside; I do not think we have anybody inside.

Mr. Aitken: We have an office in Prague, an office in Moscow, and an office in Warsaw.

Senator Laing: Trade?

Mr. Aitken: Yes, sir.

Senator Laing: I do not think it rates with the other group.

Mr. Aitken: Of course, it is a difficult area.

Senator Laing: Yes, it is.

Mr. Aitken: You are not dealing with private buyers as you are in, say, South America or Europe.

Senator Laing: But this is a field that will probably explode. Are we ready for it? This is my point.

Mr. Aitken: We have very good people in our Foreign Service, and I think the Department of Industry, Trade and Commerce is right on top of the situation.

Senator Laing: Have you got into any barter operations in these transactions?

Mr. Aitken: My understanding is that it is the official position of the government not to have official government involvement in barter arrangements. That does not mean to say the government will not help a private entity deal in a barter transaction, making switch deals and so on. We have several entrepreneurs who indulge in such transactions. Hopefully they do their end of the deal first, so they are protected. What we often find is that somebody comes to us and says, "We want to sell apples to Brazil and we are going to take oranges in return. Will you insure us?" I say, "Why don't you get the oranges first, and then send them the apples?"

Senator Laing: Is there any place for government in this sort of situation?

Mr. Aitken: It is the official policy of the government, I understand, not to get involved in barter, because, after all, if Brazil can sell us oranges and we can sell them apples, there is no reason why we should not pay them cash for the oranges and they pay us cash for the apples—that is what cash is for; rather than that we should ask them to ship us oranges and we then ship them apples and we set one off against the other. Certainly, I do not believe in barter. That is what currency is for, to pay cash for things, so that you can then get cash. Then you have cash, and you buy from someone and you pay cash.

Senator Laing: This proposed arrangement between the United States and the U.S.S.R. is going to be barter, but it is going to be sub-let to detailers in the United States and they will all be in private enterprise.

Mr. Aitken: And they will pay cash.

Senator Laing: Right, but it is against a commodity sold.

Mr. Aitken: In the United States it is difficult for them to do that, because they do not have state trading enterprises. I think this is all going to be a pious intention which might result in business. But the United States government cannot say to private importers, "You have to buy this or buy that." Neither can the Canadian

government say it. That is why we do not get involved in barter. For instance, if the Poles buy wheat from us and they say to the Canadian government, "We want you to buy ham," we say, "Our blessings on you, sell your ham." We have one of the most open markets in the world, but the Canadian government cannot buy their ham and cannot tell anyone to buy their ham.

Senator Laing: But you find someone who wants hams.

Mr. Aitken: That is right, and then you say, "Go ahead and buy your hams."

The Chairman: Following up on what Senator Laing has said, you have no guarantee that when the United States, the OAS, and the EEC and the U.S.S.R. are going to make an agreement, that they are not going to make it on some new kind of basis?

Mr. Aitken: It would be interesting to see.

The Chairman: And where barter may directly come into the picture and it is a question of having Canada ready for that.

Senator Hays: But, there again, it may be that GATT arrangements will provide for that international policing.

Senator Walker: The Americans could not do it without a change in their arrangements under GATT.

Mr. Aitken: I think it is a question of seeing what they really have in mind, whether it is a question of their trying to open their frontiers, so that they will have an increasing exchange of trade.

Senator Hays: It would be one of the useful aspects of this.

Mr. Aitken: Yes.

Senator Laing: I think it would go further than that. Each country desperately wants one thing: the United States desperately want energy; the Soviets desperately want machinery. After that you detail to the agency, your agency in the Soviet Union, and to private enterprise in the United States. If this works out, we had better be alert.

Mr. Aitken: Senator, we are very competitive pricewise. We have won many contracts internationally in direct competition with exports from the United States.

Senator Macnaughton: The U.S.A. is also setting up a bargaining tool for the EEC, I would imagine. "If you do not want to trade with us, we will trade with Russia, we will trade with Japan."

Mr. Aitken: That may be.

Senator Flynn: What kind of energy would the United States get from the U.S.S.R.?

Mr. Aitken: Oil.

Senator Laing: They are talking about frozen gas.

Senator Flynn: That is a good place to find it.

The Chairman: It would be a good political move, if you could do it, depending on the type of gas that you freeze. Are there any other questions?

Senator Molson: Looking at the statement of the EDC, I find it very informative; but I have been unable to get the cumulative figures on the "Highlights" on page 4. Performances in the years 1971-72 are set out, but I find it difficult to find anywhere in the report where these cumulative figures, which relate to the ceilings and so on, are set forth.

Mr. Aitken: The ceilings of course are current ceilings and relate to current outstanding business. We have an 850 million dollar ceiling.

Senator Molson: You also have a ceiling by law.

Mr. Aitken: We have an 850 million dollar ceiling; you are right, it does not show on that page of highlights.

Senator Molson: You start at the top and you have exports insured, credits insurance. What is outstanding?

Mr. Aitken: You have to look at the notes to the Balance Sheet to find that out. If you look there, you will see it shows under note 1, the very first note on page 18, on the left. The contracts outstanding are \$319.8 million. That is under the \$500 million ceiling. It is the last figure in paragraph 1.

Senator Molson: Wouldn't it be a nice idea to have that on the highlights?

Mr. Aitken: Very well, we will do that next year.

Senator Molson: What about the others? Are they all in the notes, too?

Mr. Aitken: Yes, sir.

Senator Molson: I must admit that I did not go through the notes in detail.

Mr. Aitken: We have a ceiling of \$850 million. We had outstanding notes, \$489 million. In the next one, the notes under section 31, there is \$450 million there, and we had only \$32 million out.

Senator Molson: Which is section 31?

Mr. Aitken: It is where we lend money on government account, where they carry the risk. We did that for Iran, \$100 million; for Pakistan, \$4 million, a sale of de Havilland Otters to Pakistan. Out of that we paid out only \$32 million.

Senator Molson: So that is, way below the ceiling?

Mr. Aitken: That is right. Then we have paragraph 4 again, the last figure here relates to wheat; and to large aircraft contracts with Peru and Brazil; and wheat sold to half a dozen countries; and that total is \$330 million liability under the \$500 million.

Senator Molson: Finally, you have the investing in force at the end of the year.

Mr. Aitken: That is correct.

Senator Molson: Thank you.

The Chairman: Are there any other questions? Our instruction was to study the operations. Do you feel that you have given us a fairly complete picture?

Mr. Aitken: Mr. Chairman, I think the questions have elicited a lot of background detail.

The Chairman: You did say something to me earlier, that questions had been asked in various places about your operations. Have we covered them today?

Mr. Aitken: By and large, yes, sir.

Senator Molson: What did we miss?

Mr. Aitken: One thing you did not ask about was the criticism that was made, I believe, in the other place, that we seemed to be involved with large multinational concerns. The suggestion was made that we should not be lending to a Brazilian buyer where that buyer was in turn owned by Brascan. Our response was that we are set up to promote Canadian exports and, provided that the borrower in Brazil is creditworthy—and in this particular case we have the guarantee of the government of Brazil,—and we lent them, I think, \$28 million which they are going to spend in Canada for Canadian capital equipment to expand their electricity distribution system. Just because it happens to be owned in large part by a Canadian company is no concern of ours, in my opinion, and in our board's opinion, and our board approved this particular credit in the knowledge that it was a subsidiary of a Canadian entity. As a matter of fact, I think it is a first-class arrangement because they will spend money in Canada for Canadian capital equipment, and we will get paid.

Senator Cook: That is a good kind of investment.

Mr. Aitken: Yes.

Senator Connolly: Is there any way of knowing what percentage of your business is done to facilitate the purchase of capital equipment in Canada, as opposed to the purchase of commodities in Canada?

Mr. Aitken: Senator, we finance, but where our financing is provided it is only for capital equipment.

Senator Connolly: It is only for capital equipment?

Mr. Aitken: Yes, sir, only for capital equipment; but the insurance is for all sorts of commodities.

Senator Connolly: All right, let us take insurance. What percentage relates to insurance sales of capital equipment categories as opposed to sales of commodity categories?

Mr. Aitken: Ten per cent.

Senator Connolly: The general question I wanted to ask is: In the facilitation of exports of capital equipment, do you ever feel that by doing this you ultimately are exporting Canadian jobs? I am thinking here of competitors who are manufacturing with our capital equipment commodities that could be manufactured here. Is it a problem?

Mr. Aitken: I do not think it is a problem, senator. With respect to the export of capital equipment, let me take a particular example which I referred to earlier, namely, our sale of a pulp and paper mill to Chile.

Senator Connolly: That is what I was thinking of.

Mr. Aitken: We did that in 1961. We had complaints from Canadian pulp and paper producers that we should not have done so. We pointed out that if we had not done it somebody else would have. That is the first point.

The second point is that where we do it and Canadian manufacturers of that equipment get business, then, hopefully, they will improve their competitiveness through doing more business and they will sell other equipment abroad. Then, also hopefully, their prices will be lowered thereby, or their facilities will be improved to the extent that the manufacturers of pulp and paper will be able to

buy better, more sophisticated equipment at lower prices and thus themselves become more competitive.

Senator Connolly: That helps the manufacturer of the equipment, but not the pulp and paper companies.

Mr. Aitken: It does not directly; but ultimately it does indirectly, because if Canada does not export pulp and paper machinery, then Germany or Finland will do so. We might as well get that business. If the pulp and paper manufacturers complain, then they just have to become more competitive.

It is a funny thing, but the pulp and paper field, as you senators probably know better than I, is either a feast or a famine. As recently as last September it was a buyers' market in pulp. You could not sell pulp for anything, but today you cannot buy pulp. The pulp manufacturers are sitting back enjoying themselves. It is a sellers' market in pulp today.

Senator Laing: You can buy it if you are willing to pay.

Mr. Aitken: You can get anything for a price.

The Chairman: If there are no further questions, I would like to thank Mr. Aitken very much on behalf of the committee.

The committee will be making a report, Mr. Aitken, and it will be up to the committee to decide what form that report will take. Perhaps the form will simply be to say, "Attached hereto is a transcript of the study." We would simply embody that in the *Hansard* of the day as a permanent record. That might be the best way of doing it, instead of trying to paraphrase what has been said here today, because the questions have been direct and we have been very happy with the conciseness of Mr. Aitken's answers.

Mr. Aitken: Thank you, Mr. Chairman.

The Chairman: Thank you very much, Mr. Aitken.



FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 4

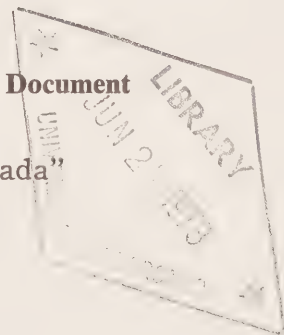
WEDNESDAY, MAY 30, 1973

Second Proceedings on the Examination of the Document

Intituled:

“Foreign Direct Investment in Canada”

(Witnesses—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 16, 1973:

“The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the document entitled “Foreign Direct Investment in Canada”, tabled in the Senate on Monday, 15th May, 1972, and the subject-matter of any bill arising therefrom, in advance of such bill coming before the Senate, or any other matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.”

ROBERT FORTIER
Clerk of the Senate.

Minutes of Proceedings

Wednesday, May 30, 1973.

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 10:45 a.m. to examine and consider document intituled: "Foreign Direct Investment in Canada".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Buckwold, Connolly (*Ottawa West*), Cook, Flynn, Gelin, Hays, Laing, Lang, Macnaughton, Martin, Molson and Smith. (15)

Present, but not of the Committee: The Honourable Senators Heath and Lafond. (2)

In attendance: Mr. R. L. du Plessis, Acting Parliamentary Law Clerk, Department of Justice.

The following witnesses were heard:

Department of Industry, Trade and Commerce:

Mr. R. D. Gualtieri, Special Adviser to Deputy Minister.

Department of Justice:

Mr. F. E. Gibson, Legal Adviser.

At 12:30 p.m. the Committee adjourned until 2:15 p.m., this day.

2:15 p.m.

At 2:15 p.m. the Committee was called to order by the Chairman, continuing the morning meeting of the Committee.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Buckwold, Connolly (*Ottawa West*), Cook, Flynn, Gelin, Hays, Laing, Lang, Macnaughton, Molson and Smith. (13)

Present, but not of the Committee: The Honourable Senators Carter, Heath, Lafond, Macdonald and Manning. (5)

In attendance: Mr. R. L. du Plessis, Acting Parliamentary Law Clerk, Department of Justice.

The following witnesses were heard:

Department of Industry, Trade and Commerce:

Mr. R. D. Gualtieri, Special Adviser to Deputy Minister.

Department of Justice:

Mr. F. E. Gibson, Legal Adviser.

At 3:20 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, May 30, 1973

The Standing Senate Committee on Banking, Trade and Commerce met this day at 10:00 a.m. to give consideration to the document entitled "Foreign Direct Investment in Canada".

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we now come to the continuation of our consideration of the subject matter of Bill C-132. Immediately on my right is Mr. Gualtieri, who was with us before. He is Special Adviser to the Deputy Minister in the Department of Industry, Trade and Commerce.

On the last occasion we met to deal with the subject matter of this bill we also had with us Mr. Gibson from the Department of Justice. Mr. Gibson will be here a little later.

Mr. Gualtieri did not get a substantial part of the limelight last time, owing to the fact that we got into the question of the constitutionality of this legislation. Mr. Gibson was the one who was in the position to answer questions because, apparently, the Department of Justice had given an opinion on the constitutionality of this bill—and, of course, that is something we may probe further in our own way. Mr. Gibson gave reasons, and Mr. Gualtieri undertook to furnish us with a copy of the opinion which was expressed by Mr. Gibson before the house committee, and I have received that. I had considered the possibility of distributing copies; and, if it will Xerox and come out clearly, I will do so.

In effect, what Mr. Gibson said to the other committee is what he said here, and I would have expected that. They lean heavily on the "Peace, Order, and good Government" clause in section 91 of the BNA Act, and also, to the extent that it is something that they can lean on, "The Criminal Law"; but these are all things that we can deal with later.

Senator Flynn: Will Mr. Gibson be here later?

The Chairman: I understand that he will be here very shortly.

Senator Flynn: I just wanted to ask him what he thought of the bill introduced in the Quebec legislature about insurance companies incorporated under Quebec law, by which it is provided that non-eligible persons or groups cannot get more than 25 per cent of the stock. Whether you could have concurrent jurisdiction in this field is what I was wondering.

Senator Connolly: What was the restriction, Senator Flynn?

Senator Flynn: About the same as is provided here; about 25 per cent, I understand.

The Chairman: That was a Quebec incorporation.

Senator Flynn: It is a bill before the Quebec legislature which deals with the insurance companies incorporated under the Quebec Insurance Companies Act, and it will provide that the stock of these companies cannot be held by non-residents, if you want, to a larger extent than 25 per cent. I was wondering whether they would consider that as criminal law.

The Chairman: Well, Mr. Gibson is not here, but Mr. Gualtieri has had time to reflect on how this committee operates, so maybe we can get at him now.

If I might start with a lead question to see what answer you will make, Mr. Gualtieri, it is this: We agreed on the last day with the witnesses, Mr. Gibson and yourself, that the factors provided in clause 2, subclause (2) must be taken into account by the minister in reaching a decision as to whether what this non-eligible person or corporation, whatever it is, proposes to do will be of significant benefit to Canada. We agreed that the guideline that the minister must follow is the factors set out in clause 2, subclause (2).

Now, I would like to get your view on this, if you feel that I am not stepping into policy. If the minister is obliged to follow these factors in coming to a decision as to whether he will grant the application of these non-eligible persons, his simple answer may be "no" and he can make a recommendation to the Governor in Council. I assume that the background of reasons may be in the recommendation that would go to the Governor in Council. Is the form or the content of the recommendation contemplated anywhere in this bill?

Mr. R. D. Gualtieri, Special Adviser on Foreign Investment to the Deputy Minister, Department of Industry, Trade and Commerce: Mr. Chairman, I do not think there was anything in the bill which specifically delineates the sort of supporting elements that the minister would have to provide to the Governor in Council in making his recommendation; but it is clear that the minister must provide the Governor in Council with the reasons for his particular recommendation.

The Chairman: That is what I was getting at.

Now, if I am on the other side of the issue and I am the non-eligible person seeking clearance through this procedure under this bill so that I may carry on that enterprise in Canada, should I

not have the reasons as well, so that I may determine whether or not the minister has stayed within the guidelines?

Mr. Gualtieri: I think, Mr. Chairman, one important point which I wanted to bring out, and which I have not done as yet, is that if there is a negative recommendation on the part of the minister, the applicant will have a right to a hearing. That is to say that the minister cannot make a negative recommendation without issuing a demand notice to the non-eligible person allowing him the opportunity to provide further information or to make further undertakings and generally have a discussion about the minister's opinion. That is in clause 11.

Senator Connolly: After an initial rejection?

Mr. Gualtieri: This is if the minister comes to the opinion, on the basis of the information he has, that he cannot recommend allowance, then he must get in touch with the non-eligible person and give him an opportunity to provide further information or make further undertakings in order to try to meet the "significant benefit" test.

The Chairman: But that does not go to the root of my question. Section 11 does provide that if the minister, in the course of his study of the material which has been filed with the Review Board and which has gone on to him, comes to a conclusion, or his assessment before he reaches a final decision indicates he is going to be against granting the request, will the person affected be furnished with the grounds upon which that opinion was formed? It is one thing to say, "Yes, we will give the applicant the right to come before the minister and make representations," but it would be much more helpful if he knew the basis for the thinking.

Mr. Gualtieri: I thought, Mr. Chairman, that I was indirectly answering your question because, in fact, if you are discussing with a foreign investor whether or not his proposal is likely to be of significant benefit to Canada, and you cannot agree, this would, to my mind, become evident in the discussions with the foreign investor, and also in terms of discussing what things the government might want and the undertakings it would be seeking. The reasons for a negative opinion would become fairly clear on the basis of the interchange between the minister and the non-eligible person.

Now, I think the formal answer to your question is that he would not be provided with the reasons as provided to the Governor in Council, but I think, in fact, on the basis of the discussions that would have taken place between the minister and the non-eligible person, he would understand very clearly why the minister does not feel able to make the recommendation.

The Chairman: What I am getting at is this: The minister would not refer to subsection (2) of section 2, where the factors are enumerated, and say, "I have come to the conclusion that I cannot recommend this, but I am willing to hear what you have to say"; but would he say it is because of one of the subsections in this section 2?

Mr. Gualtieri: I rather think the discussions would be a little more detailed than that because the minister would, for example, in

talking to a non-eligible person about a certain acquisition, say that, "On the basis of the information as provided, it seems as though really the only thing you want to do is simply to change the ownership, and what is the significant benefit of that? Now I understand that there is a certain technology being developed in your research laboratories in Britain or in France, or wherever the non-eligible person happens to reside, and it seems to me that a portion of that technology ties in very well with some work going on in Canada. Would it not be sensible to do a little of that research here in Canada?"

During the course of the discussion it would become quite clear that this is the sort of thing the minister would want in order to make that acquisition of significant benefit to Canada. Then, if the person refuses in the course of these discussions to accommodate the minister's request, he would know quite precisely what it was that led the minister to his negative opinion. He could also at the same time go on to say that in accordance with factors A, B, C and perhaps D, in the case of the example I have given, the acquisition is not of significant benefit to Canada, but the non-eligible person would have a much better feel about it than simply a recitation of the factors in subsection (2) of section 2 as to the reasons why the acquisition was not allowed.

Senator Flynn: It is an informal hearing that would take place before the minister would make a recommendation to the Governor in Council?

Mr. Gualtieri: Correct.

Senator Flynn: That is what is provided in the act. And the final judgment would be rendered by a recommendation to the Governor in Council.

Senator Cook: There is nothing in the act to make it mandatory on the minister to declare the issues?

Senator Flynn: No, and he could hide his hand to some extent, because you do not know what will finally be in the report to the Governor in Council.

Senator Cook: Let us take the case of a roll-over. A non-eligible person starts, let us say, a frozen fish plant in Nova Scotia or Newfoundland. He operates it for ten years, and his associates are in Britain or the United States. Then he wants to sell. So he comes to the minister and says he wants to sell to a group of non-eligible persons. Now, in view of the fact that the language says that it can only be done if it is of significant benefit to Canada, and it is already owned by a non-eligible group, and they want to sell or amalgamate with another non-eligible group, and there would be no change in the carrying on of the business, how can the minister say that it can only be done if it is of specific benefit to Canada? Isn't the first non-eligible group being forced to sell to Canadians?

Mr. Gualtieri: May I make one point before answering the question in detail? The obligation to come to the minister would not be on the non-eligible person who was operating that business, but it would be on the person who decided he wanted to acquire the business. The onus for getting approval is on whoever wants to take over the business.

Senator Cook: How does that change the situation?

Mr. Gualtieri: It does not change the substance of your question, but I wanted to make clear that the onus of going to the minister is not on the seller but rather on the purchaser. Now, the reason the government feels that that sort of transaction should be covered is that even though the ownership figures for the industry would not change, because one foreigner would be selling to the other, there is a transaction which takes place where the government can review with the intention or purpose of trying to get greater benefits from that particular operation. Taking the example that you have used, a fish processing plant, the government might say to the purchaser, "Well, what about purchasing more of your supplies in Canada, because under the present operation much is being imported and there are economic sources here in Canada?" Or perhaps with a view to expanding exports to certain other markets, or doing a bit more research on packaging and on preserving, and that sort of thing. There is a transaction that allows the government to try to get greater benefits from that particular operation. The government felt that there was justification in intervening in that transaction, even though there is no change in the overall foreign ownership in the industry.

The Chairman: As I understood Senator Cook's question, you have a company that has established an enterprise in Canada; it has been accepted by the government; it is owned by non-eligible persons. The government has said that operation in Canada will be of significant benefit to Canada.

Senator Flynn: You mean the decision has been made?

The Chairman: Yes.

Senator Flynn: Not an enterprise that was foreign controlled before the coming into force of the act.

The Chairman: No. I say, where you have non-eligible persons who want to take over or establish a business operation in Canada, they go through the procedures in the bill, they get the necessary consent or approval to carry on that business in Canada. At a later date they may decide they want to sell out to another non-eligible person. I think that was your question, was it not?

Senator Cook: Yes, Mr. Chairman.

The Chairman: What is there that changes the interpretation of "significant benefit"? You suggested that there might be more things that at that time the government might want, such as a greater quantity of purchases in Canada. Surely, we must assume the test is not a quantitative test? The test is "significant benefit." If they once make the decision on that basis, isn't it like carrying a passport?

Senator Cook: The wording says that he can only get permission if it has been established. It is not sufficient to carry on as a good citizen; he must establish that the change is going to be of "significant benefit".

Mr. Gualtieri: There are two points there. One is that there is a new transaction now, and it is conceivable, for example, that as a

result of that transaction the new acquirer might do something which would actually run down the business. He might decide to close it up, because he has a plant five miles down the coast and does not want competition. That is one factor, that there is a new transaction there, and we have to find out what the purchaser intends. More important is the fact that the business situation can change. What is of significant benefit in 1972, given the economic strengths and weaknesses of Canada in general in that particular area, might in 1980, eight years later, be entirely different; there might be new sources of supply in that locale that did not exist at the time the original approval was given, so that it would make sense for the new purchaser to do more purchasing in the local area.

The Chairman: If I might interrupt you right there, in effect what you are saying is that if I get the finding of the minister that this operation or enterprise is of significant benefit to Canada, that is a variable finding. You might just as well tell me that under the bill he can review that from time to time and say that there are economic changes next year.

Mr. Gualtieri: I am saying that you cannot stand in the same water in the same river twice; that is correct. I think it is recognized that the economy changes, that the strengths and weaknesses of the economy change, and any sensible economic legislation has to take this into account.

Senator Cook: Would you agree that if I, as a non-eligible person invited to come into Canada, read this clause and was advised by my lawyer, I might say the effect of this clause is that in due course I will have to sell out to some Canadian at a bargain price?

Mr. Gualtieri: My answer to that would be that the legislation says that if at some future date you want to sell out, then the person acquiring the business would have to show significant benefit. That does not mean you could not sell out; it just means the person has to show the Governor in Council that there would be certain benefits to Canada. Let me emphasize, that does not mean the acquisition would be blocked automatically.

Senator Connolly: Suppose in the course of time an enterprise adjudged to have been of significant benefit to Canada was allowed to go to a foreign owner, and subsequently became obviously an enterprise that was not of significant benefit to Canada under the normal tests, there is nothing in this bill, as I understand it, to divest those people of their ownership, to remove them.

The Chairman: There is nothing in the bill.

Senator Connolly: Once they get it, they have it.

Senator Flynn: They cannot sell.

Senator Connolly: I realize that. There is never any risk that once having made the investment they could be deprived of the investment because the enterprise was found not to be a significant benefit?

Mr. Gualtieri: That is correct, with perhaps one proviso. If, as a condition of allowing the investment, the government had required the non-eligible person to make certain undertakings in written form

and those undertakings had been broken, then the government has the opportunity to take that person through the courts on those broken undertakings and get new ones.

The Chairman: We are not discussing that at the moment.

Senator Flynn: To obtain compliance with the terms; that is all right.

Senator Connolly: That is just an action in contract.

The Chairman: That is right; it is a civil action. If they have given certain undertakings or covenants and do not live up to them, they can be taken to court. We are not talking about that kind of situation. We are talking about the kind of situation where I am established in Canada, having proven myself and having been accepted under this bill; after whatever investigation the minister makes I meet all the requirements. If then I want to sell at a later date to another non-eligible person, that purchaser must apply for approval. What I am asking is why the significant benefit which has been found by the minister does not carry through.

Senator Molson: Does this not get back to your premise at one time, Mr. Chairman, that this whole bill would have been a great deal easier if the words had been, not "significant benefit" but "non-detrimental"?

The Chairman: This is a question I put to Mr. Gualtieri last time, and I asked him to think about it.

Senator Molson: Does this not repeat now, when you begin dealing with a problem such as this, of one non-eligible having acquired his rights and then wishing to sell at a later date to a second non-eligible? The issue comes up again.

The Chairman: That is what Mr. Gualtieri says. Since it is the purchaser who, if he is a non-eligible person, must clear himself under the bill, the purchaser would have to meet the requirements of the statute. Why could he not say, "I have a finding of the minister. I stand on that"?

Senator Flynn: That is what I was saying. The answer is that under the bill there is no *res judicata*.

The Chairman: Yes. If that is the answer, then as far as we are concerned the question is whether we think it should be.

Senator Flynn: Of course.

Senator Connolly: Following Senator Monson's question, I would think that if it were to be done on the basis of not the test of significant benefit but the negative test, not damaging to Canada . . .

The Chairman: On the second time round.

Senator Connolly: — then the bill would have to have tests; you have to have a new series of tests to determine what would be damaging to Canada. That is just as they attempt in clause 2 (2) to

put in tests of what is of significant benefit to Canada. If we are going to have as separate criterion a project that is not going to be damaging to Canada, I think we would have to have a new set of tests.

The Chairman: This is a question I asked Mr. Gualtieri to study the last time; it is on the list, and we are coming to it. In this connection, concerning what we are talking about now, the dealing between two groups of non-eligible persons, I think the situation was this. For instance, take two companies in the United States, and each company has one or more subsidiaries in Canada; and one company in the United States acquires all the assets of the other company in the United States, which of course, gives it all the shares of the subsidiary Canadian company. I understand that, even though this transaction would have to be approved by the minister. Or he would take the proceedings under section 20 of the bill to make it ineffective. I can remember all the oratory that I have had to listen to at times, when the internal revenue authorities in the United States appeared to intrude into Canada to enforce some of their taxing statutes. I can almost give you word for word this attempt to apply extraterritorially the law of the United States in Canada. In effect, that is what we would be doing, is it not?

Mr. Gualtieri: I do not see that, senator, I must say. We are not attempting to block or affect the transaction that takes place in the United States, but we are moving against legal entities here in Canada, the subsidiaries which are presumed to be incorporated under the federal or the provincial laws here.

The Chairman: Mr. Gualtieri, that is a difference without a distinction, or a distinction without a difference, whichever way you want to put it. In effect, two companies in the United States enter into an agreement, and one buys all the assets of the other. That is a completed transaction in the United States and they get delivery of the share certificates, et cetera. It is a good contract, unless you have a lawyer for the purchaser who is smart enough to say that they had to clear the transactions under this in Canada. But what you are going to do is take part of that purchase in the United States of the Canadian shares of the Canadian company and say, "If you do not conform to this legislation, C-132, or if you do apply and you do not meet the test, you are not going to carry on that business in Canada; and if you try to do so we are going to go to the courts, get an order, seize the shares, put them in the hands of a trustee and sell them" That is not an exaggeration of what the bill says, is it?

Mr. Gualtieri: That is a possible outcome, but I do not doubt that, as being at all illogical, because I do not see why the Government of Canada and the Parliament of Canada cannot set the rules which a business which operates in Canada should abide by.

The Chairman: Let us make it more embarrassing for you. Let us say the subsidiary companies in Canada are provincially incorporated companies.

Mr. Gualtieri: I do not see, given the constitutional opinion that Mr. Gibson has given us, that that complicates the matter at all.

Senator Cook: Excuse me, Mr. Chairman, I am looking at the company's position as you outlined this. The sale will be to a very restricted market, to Canadians. It will be up to the American investor to look at the prospect of his company being taken over by the Canadian government as a result of the merger and then being sold to Canadians.

Mr. Gualtieri: Or to non-eligible persons who can assure significant benefit.

Senator Molson: Where the important point outweighs the second point.

Senator Connolly: There could be a way around it, for these two American companies that are bargaining with each other about it. If they kept the two charters in being and operated under the two charters, then the corporate shareholdings of the Canadian subsidiaries could in that instance remain with the same company and they would not have to go to the department or the board. They would not come under the provisions.

The Chairman: But you would have a change of ownership, if one American company bought the assets of the other, which would include the shares.

Senator Connolly: You would not have a change of the ownership of the shares of the Canadian subsidiary if they were held, say, by company A; and even though company A was taken over, it is still in being.

Senator Flynn: You are looking for a trick to get around it; that is always possible.

Senator Connolly: That is all I am suggesting here, that there is a way perhaps of doing it, without bringing themselves under the provisions of this bill.

The Chairman: Senator Connolly, you have been here quite a while and you have been practising law a long time, and you know, too, that every year we have bills come before us and the next year we have amendments, for the very reason that some person has been able to find a way to do a transaction notwithstanding what the bill says. So all we are doing now, as I understand it, is exploring the possibility. We are not trying to find answers that would enable this bill to be defeated.

Senator Connolly: That is why I put the question, because I think we should know what the implications are.

Senator Molson: If the assets are sold by one foreign company to another, I do not quite see how Senator Connolly's premises fit. If it is a sale of assets, then the ownership of the subsidiary presumably would be amongst its assets. So the fact that the corporate shell remained would not have any bearing on it.

The Chairman: There are various simple ways in which they could deal with that situation and get to the root of it. They could require every Canadian company, for instance, to make a declara-

tion once a year in connection with any returns filing, that the registered holders are the beneficial holders of the shares; and, if there has been any change, to say whether there has been or not, and you would have them caught right away.

Senator Macnaughton: In any event, Mr. Chairman, I would say it is not the most appealing situation for foreign investors.

The Chairman: No, definitely not.

Senator Cook: It would scare them.

Senator Flynn: That is the point made by Senator Cook, that this provision of the bill would scare foreign investors because they would know in advance that they could not sell without applying again for authority to do it.

Mr. Gualtieri: That is a very important question which has been raised, whether or not this bill will frighten foreign investors.

Certainly, in the government's judgment, as I understand it—and perhaps this can be explored more fully with Mr. Gillespie when he appears—it will not, by and large, scare off foreign investment, because it is believed that foreign investors are used to operating in environments in other countries which are very similar to the type of regulations which we are setting up. I can just pull a few out of the hat—Britain, France, Switzerland, Norway.

The Chairman: India.

Mr. Gualtieri: India, Japan, Australia. It is not as though Canada is pioneering in the area of foreign investment legislation; far from it; we are really lagging behind other countries in this.

The Chairman: Again, I think you are going to a parallel line and avoiding getting right at the meat of the question. Sure, in different countries in the world they have different regulations. If you want to carry on business in India, I think 49 per cent of the shares have to be locally owned.

Senator Flynn: In Mexico, it is 51 per cent.

The Chairman: All the foreigner can hold is 40 per cent. We are not talking about that type of thing, but about the type of thing where the transaction is fully completed in the United States and some of the assets happen to be in Canada. Immediately, even though the entities who make the deal are subject to United States law, their subsidiary companies are subject to Canadian Law. But they are going to have, in those circumstances, to try to come under the act. I mean, the moment the government learns that there has been this change of ownership from one non-eligible person to another, they are going to bring them to task to clear with the minister; or they will put them out of business, they will get an order of the court and seize their shares.

Senator Flynn: At the discretion of the minister also, at a future date.

The Chairman: Yes.

Senator Cook: That applies to all existing corporations. It is not quite so bad with future corporations. When you say it in the past, at least you can go in and get the policy. That makes it that much worse, but it also can be applied to existing corporations. This is pure guesswork on my part, but if it also applies to the existing situation, we are changing the ground rules very drastically.

Senator Connolly: You are restricting the purchaser market; that is what you are saying.

Senator Cook: Yes, that is right.

Senator Molson: It may be a different minister who rules on the second application involving the same companies.

The Chairman: Of course, Senator Molson, there might be a different makeup in Parliament, and you might have a different view of the kind of legislation that you are going to get.

Senator Molson: It is still a possibility.

The Chairman: We cannot cover all those things.

Senator Flynn: There is an area of discretion, however, because in this bill the minister might make it that the subsequent minister of the same government might have a different outlook and might make decisions which are not of the same type as his predecessor's.

Senator Macnaughton: One thing, for sure, is that you are going to have a nice, new bureaucracy or department to process.

The Chairman: The only thought that strikes me is that the avowed purpose of the bill seems to be that they are swinging very broadly and with a pretty heavy mallet, and whether that is necessary or needed in order to do the things that they think are in the national interest, like acquisitions and the establishment of a new business, or an expansion of business in an unrelated line, as against the line you are in now -

Senator Cook: Plus the fact, Mr. Chairman, that it is going to establish what I call a "commercial Star Chamber," because the applicant does not know and the minister can act with his cards completely up his sleeve, not having to disclose anything whatsoever.

The Chairman: This is something we have noted. On that point, there is nothing more you want to add at this time, Mr. Gualtieri? When he comes, your minister may want to say something about it.

Mr. Gualtieri: I would like, Mr. Chairman, with your permission, to pick up some of the points which have been made during the past few minutes.

The Chairman: The transcript will be available in a few days. You have nothing to add on that point, Mr. Gibson?

Mr. Gibson: I don't believe so.

Senator Connolly: Does this bill not restrict itself to acquisitions, Mr. Chairman, and not to the establishment of new businesses? It does not in any way inhibit or control the establishment of a new, wholly foreign-owned corporation in Canada?

The Chairman: The bill covers that.

Senator Connolly: It does?

The Chairman: Yes, that is the difference between this bill and the first bill we had. The first one was limited to acquisitions. This one deals with the establishment of new businesses.

Senator Connolly: In other words, when you make application for incorporation now you must supply evidence to the Department of Consumer and Corporate Affairs as to Canadian ownership and the prospect of Canadian ownership?

Senator Flynn: Yes, if it follows that it is going to be foreign owned.

Senator Cook: Not really. You are not in any jeopardy, if you are all Canadians. It is only the other way.

Senator Flynn: There would be the problem of having the department issue the letters patent.

Senator Connolly: What happens if, subsequently, just through the purchase of shares, even of a private company, the shares should pass to foreigners?

Senator Flynn: What about the case of the inheritance of shares? Suppose a Canadian bequeaths shares of a company to his son who is now a US citizen?

Senator Molson: It is a question of control.

Mr. Gualtieri: That would be subject to review, because there would be acquisition of control by non-eligible persons.

Senator Molson: It would have to be control.

Mr. Gualtieri: Yes.

Senator Molson: Which, in a private company, in the case of a non-public company, would be 40 per cent of the shares.

Mr. Gualtieri: It is a matter of fact in each case. It may be 40 per cent; it may be 50 per cent; it may be something less.

The Chairman: I think of a very interesting situation which Mr. Gibson, I am sure, will be delighted to hear. When we were studying the income tax law, we were discussing the business of a Canadian who changes his residence and goes to another country. We were discussing the application of tax on the assets, and we found he had several elections that he could make if he wanted to retain those as

Canadian assets. He could, by providing security, retain those Canadian assets, even though he had become an American citizen or resident of the United States. He could retain them on giving security against the possibility of tax being payable on the basis that a gain might be made at some time in the future on the sale of those assets.

Now, if the assets happen to be shares of a Canadian enterprise here, he has permission under the Canadian tax laws, but here you have a requirement under this bill that he is going to have to secure the grace and favour of the Minister of Industry, Trade and Commerce or they will seize his shares and sell them, and maybe make a compulsory gain for him for which he will be subject to income tax.

Senator Flynn: Or vice versa.

The Chairman: My own feeling at the moment—and this is no final statement on my part—is that for the purposes they want to accomplish they are reaching too far out.

But Mr. Gibson, when I started out what I really wanted to mention was the case of Cyrus Eaton. He is a Canadian citizen, and the United States authorities were trying to come at him in Canada. I think they had a judgment against him in the United States in connection with taxes, and they came into Canada to sue on that judgment. I can remember the howl that went up in Parliament at that time about the U.S. government attempting to give extraterritorial effect to their laws.

Now we are doing the same thing here, it seems to me. It is all right for Mr. Gualtieri in a philosophical way to rationalize it, but let us just look at the fact of the situation.

If two Canadian companies are owned by two U.S. companies and, finally, the ownership goes into one company in the U.S. so that the two Canadian companies are owned as to their shares by non-eligible persons, then to say that, if the American resident does not conform—because it is not the case for the Canadian subsidiary which must conform to Canadian law since it is incorporated here and must do whatever the Canadian law says—but to say to the U.S. non-eligible person who holds the shares of that company, who acquires them from another non-eligible person, that he must come in here and take all the proceedings that are required under this bill to establish that these operations will be of significant benefit to Canada . . .

Mr. Gualtieri: Mr. Chairman, may I comment on this, because this is such an important point that I do not believe there should be any misunderstanding on it? I think there is an important distinction to be made between the extraterritorial application of the law and the extraterritorial effect of any law, regulation or policy.

What we have been complaining about in Canada, basically, has been the extraterritorial application of foreign laws to Canadian persons, be they businesses or individuals. What I submit, Mr. Chairman, is that this law does not in any way apply to the transaction in the United States because it does not try to get at that transaction. What it does try to do is get at the transaction in Canada and the persons who are in Canada.

Now, it is clear that there are some effects on the transaction in the United States, just as, for example, when the United States government puts on an import surcharge there are effects in Canada; but that is not the extraterritorial application of the U.S. law in Canada.

Unless one draws a very careful distinction between the application and the effects, one cannot really go very far down the road in discussing the extraterritoriality concept.

The Chairman: The moral to draw from it, Mr. Gualtieri, is that the Americans will learn very quickly that there is a penalty if they become holders of shares in a Canadian enterprise.

Senator Heath: Mr. Chairman, can't you just see, after hearing Mr. Aitken earlier this morning, what is going to happen? We are going to have all kinds of applications for a reverse procedure in foreign investment insurance.

Senator Molson: Mr. Chairman, I was just thinking of the complications that might arise out of this proposed law if it had been in effect about 20 years ago. At that time, as you will remember, I think, a company of which I am a director—and I should put it on record—Canadian Industries Limited, was owned jointly in major part by ICI of Great Britain and Dupont of the United States, with participation by the Canadian public shareholders who were in a minority position and held a minority portion of the equity. Mr. Justice Ryan, I think it was, of the Federal Court in New York, ruled that ICI and Dupont were in some form of combine or operating in restraint of trade, and therefore ordered that they divest themselves of their interest in this Canadian corporation, CIL. I think this was about 1951, if I remember correctly, but the net result was that CIL (1954) Limited was formed and was a portion of that corporation, and Dupont of Canada was formed and was another portion.

Now, my point is that had this occurred under this law, the ruling in the United States court would immediately have set in action the requirements of this law and could have had two government bodies deciding who must win. I should think that would be the case because, in effect, the American ruling was that the divestiture had to take place, and the Canadian law would be that it could only take place at the discretion of the minister and if he saw significant benefit to Canada.

The Chairman: And if the minister said, "Yes, I see a significant benefit," then you have a situation where, under Canadian law, you have a position that would be exactly the opposite to the order that the judge made in New York State.

Senator Molson: I mentioned that because it is the kind of thing that we do not think of immediately, perhaps, and it is the kind of complication that can be injected into this situation.

Mr. Gualtieri: My first comment on that, Mr. Chairman, is that it is a very pure case of extra-territoriality where foreign judgment is applied against a Canadian incorporated company, and it seems to me that that is the sort of thing we should be concerned about, not necessarily to block it, but rather to assess whether or not it is of benefit to Canada that that type of transaction should occur. But I

submit that that type of extra-territorial application of Canadian law does not occur under this bill.

The Chairman: But would you apply yourself to the question: do we need this in order to have an effective bill?

Mr. Gualtieri: I think the short answer to that is: yes.

The Chairman: Is your answer based on policy, or are you prepared to say why you think it is necessary to have this in order that the bill may be effective?

Mr. F. E. Gibson, Director of Legislation Section, Department of Justice: Mr. Chairman, if I may interject at this point, I think honourable senators will recognize very clearly that the implications of not carrying this law to the extent which we have been speaking about would be that the objectives of the law could be circumvented in every case simply by moving the situs of a particular transaction out of Canada—simply by the establishment of a shell company or companies established for the sole purpose of accomplishing a transaction affecting Canada in a locus outside Canada.

In the event we dealt only with transactions which took place in Canada, we would be inviting the owners of Canadian subsidiaries to engage in transactions outside of Canada which, if they took place in Canada, would be subject to screening. They would be doing indirectly that which we are trying to review when they do it directly.

The Chairman: I think we are mixing up a number of questions. Let us not get into too involved a discussion. But a Canadian company, even if it is a subsidiary of an American company, no matter where it is carrying on its operations, has to bring its income home, isn't that right?

Mr. Gibson: Yes.

The Chairman: For tax purposes, at any rate. And we are talking about for shareholding purposes. So, here is a Canadian company, subject to all Canadian laws, including tax laws, and because the owner of the shares is a non-eligible person, he cannot sell those shares to another non-eligible person without getting the approval of the minister. Now, if that is not going to discourage investment in Canada, I don't know what will.

Senator Cook: It is the test we are complaining about, not just the method of carrying out the transaction.

Senator Flynn: There should be a different test.

Senator Cook: Why not have the test one of detriment to Canada?

The Chairman: A "detrimental" test might work out better. Maybe this is the time to consider this. I asked Mr. Gualtieri last time if he would think about substituting a "detrimental" test for this "significant benefit" test. Have you any comment to make on that?

Mr. Gualtieri: I would welcome an opportunity to comment on that. Let me begin by saying that this is a matter of extremely high policy which the government considered very carefully before it took the decision to adopt the "significant benefit" test. I would like to make one explanatory comment as to why that decision was taken, and then suggest that perhaps this matter, which, as you will recognize, is really the guts and core of this bill, should be pursued with the minister.

The basic reason why the major test is "significant benefit", to Canada and not "detriment" to Canada, is that the government felt that, given the high degree of foreign ownership and control that at present exists in the Canadian economy, there ought to be a bias in this bill in favour of Canadian ownership, in favour of retaining Canadian ownership and control of a business unless a foreigner could come in and prove he could do a better job and do something significantly better than the Canadian.

I hazard to say that if we had the proportion of foreign ownership and control that exists in the United States, Great Britain, France or any other industrialized country, we would have adopted the "no detriment" test; but given the fact that 60 per cent of our assets in manufacturing and 65 per cent of the assets in our resource industries are foreign controlled, the government felt that if there were going to be any further increases in that, then the foreigner should be able to show that he can do something significantly better than a Canadian, or otherwise let us keep it Canadian. I think that is the underlying explanation as to why it is put on a "significant benefit" basis.

The Chairman: Maybe we should not push this too far here, but it occurs to me that if you take a number of these companies operating in Canada that are foreign controlled and are operating in the natural resource industries, if this law had been in force when they came in, and if they had applied to the minister, and offered evidence to show the significant benefit to Canada, don't you think they would have been cleared by the minister?

Mr. Gualtieri: I would have to examine the facts of every case to give a judgment on that.

The Chairman: Then, I will put the question another way. Take any one of those companies that is 60 to 65 per cent foreign owned and is operating, for instance, in the search for and the production of oil, and the development of oil resources in the bed of the ocean, and considering the influence of that on all the bordering provinces, would you suggest that there could be any finding other than that that was of significant benefit to Canada?

Mr. Gualtieri: Since the discussion is on a general level, I would suggest that perhaps in some cases they would have had greater benefits, for example, in the form of more processing in Canada, the creation of more jobs and more supporting industries.

The Chairman: You are running away from the core of the question, and I am not going to indulge in just running away. It is a neat question.

Senator Macnaughton: Mr. Chairman, I know of a company, and I shall not give the name, that spent, let us say, \$100 on research

and development and all the rest of it. They have in a period of 20 or 25 years received about 70 per cent return, that is \$70 out of \$100. They are \$30 in the red as of the moment. They are gambling that in the next 30 or 40 years perhaps they can make 10 cents. It is a real contribution—the purchase of machinery, employment, research, effort and all the rest. At the present time they are completely financed by a foreign company. They are spending money here, and as of now, after 20 years, they are not getting anything back. It is a gamble in hope. It certainly is of some benefit to the country.

The Chairman: I think Mr. Gualtieri has sort of passed over the major portion of this question to be answered by the minister. I suppose we have to leave it there.

Senator Molson: Just before we leave it, can I perhaps toss out one further idea? Following on what Mr. Gualtieri just said about the fact of the high proportion of industry which is controlled by foreign capital, and not wishing this to go further, is it completely ridiculous to suggest that the establishment of new businesses might be subject to one standard and the change of control of existing businesses subject to another?

For example, to be quite ridiculous, if General Motors sells an existing company to Chrysler, might that not be approved, provided it were not detrimental; but if General Motors wanted to establish a new line of business, might they not be subject to the “significant benefit” test?

The Chairman: If it were a non-related line.

Senator Molson: A non-related line; that is exactly what I mean. I am just wondering if existing foreign controlled businesses could not be subject to a different test, and therefore have greater stability and greater assurance, and the foreign investor would have greater assurance, than a non-related business that is being established. I think the argument, “Let’s keep the other 40 per cent of industry Canadian” is a very valid one, and if we could do it in Canada, fine. If the foreigner says he can do it significantly better, then he would be welcome. It is a completely different thing from change of ownership of an existing operating business, in my view.

The Chairman: Let us take your illustration of General Motors. Let us assume the development of an air-cooling system, which is something that was recently developed. Let us assume General Motors, manufacturing cars in Canada, decided they wanted to go into that business. This would be a non-related business and they would come under the bill. I am wondering, in view of some of the things I would draw from what Mr. Gualtieri has said, whether the “significant benefit” that may be a factor in the determination may be the nationality or residence of the person who is seeking to extend his operations in Canada. It is just because he is a non-eligible person under this definition, not because there would be competition, not because the provinces were opposed to it, or anything else. From what he has said, with 60 and 65 per cent being owned as an answer and saying, “This is why we need the bill,” surely the test will be what is the nationality of the person, and that is enough to shut him out. If that is what we want to do, let us way it.

Senator Cook: I agree with Senator Molson if the test is applied to existing businesses and to roll-overs; in other words, you might have to prove significant benefit; once you are in the roll-over you would be subject to the negative test; in other words, the roll-over was not prejudicial.

Senator Beaubien: What strikes me is the tremendous amount of discretion put in the hands of the minister. He will decide, all of a sudden, if this is of significant benefit.

I can remember some ten years ago the Senate threw out a bill because the minister was going to be able to decide at his own discretion whether it was a “class or kind” of machinery “made in Canada”. Imagine the difference in the responsibility placed on the minister here. He is going to decide if it is of significant benefit. How are you going to know what will be of significant benefit? You would have to be a very bright cookie to be able to sit down and say whether something will be of significant benefit or not before it has started.

To me that is the very serious point in this bill. Here is somebody who will decide whether you can do it or not; it will be his decision whether it will be of benefit to Canada.

The Chairman: I should like to make this clear. There may be reports of these proceedings, and there may be some things in the papers. I do not think that from the questioning that has gone on here it can be concluded that we are opposed to the question of non-eligible persons in relation to Canadian enterprises. That is not the issue. The question is the machinery that we have created for the purpose of enforcing those principles.

Senator Cook: Whether it will do more harm than good.

The Chairman: I put the question before, and I will certainly put it to the minister: Is this the only way to do it? Do we have to do it this way? Do we have to go that far?

Senator Molson: Will it work?

Senator Laing: I do not want the witnesses to get into the area of policy at all, but because they were advisers to the minister, did it ever occur to them that this present attitude is restrictive, punitive and negative? Could we not achieve this by being positive, by giving Canadians tax advantages by Canadian equities?

Mr. Gualtieri: May I comment on that very briefly, although that is a matter of policy? It is on record in Mr. Gillespie’s speech, in introducing the bill on second reading, that I think he would entirely support that proposition, that a sound foreign investment policy has to be based, as he said, on two pillars. On the one hand, there have to be incentives and support for the development of Canadian entrepreneurship, Canadian business and strong Canadian controlled enterprise. In his speech the minister recited a list of programs that Canada has introduced, including some in the tax area, the grant loan programs which are operated in the Department of Industry, Trade and Commerce, such as PAIT, IRDIA, GAAP, DIP, PEMD and so on. There is, in

addition, the CDC. These are all things that are on the positive side to help the development of Canadian entrepreneurship. In addition to that, it is the government's view that one needs special measures to deal with foreign investment to ensure that we obtain the greatest possible benefits from that investment that takes place in the country.

Senator Laing: The chairman asked you a question some time ago which he did not expect you to answer. That was, to go back 20 years and see whether the representations we were making at that time were advantageous to Canada.

We do not need to go back 20 years; we only need to go back seven years, because at that time ministers were arranging missions to New York. I was one of them at the time. They were getting our people in New York to assemble all of these fine people with money so that we could talk to them and encourage them to look northward to Canada. I go back to Trans Mountain Oil Pipe Line Company, the private bill which I took in the other place at that time. These people not only brought their money, but they brought up all the technology, of which we, as Canadians, did not have the slightest comprehension at that time. We could not even wrap the pipe; we even had to bring Americans up to show us how to wrap the pipe. Now we can spin pipe, we say, up to 48 inches. We made progress out of that. It is not only money, it is technology.

Mr. Gualtieri: If and when this bill is passed by Parliament, I do not envisage that type of mission stopping, because this bill recognizes that foreign direct investment has a role to play in the Canadian economy. It is not anti foreign investment. If the bill were anti foreign investment, it would adopt quite a different approach. It would just say that there shall be no more foreign investment in Canada—period. It would be very easy to adopt that kind of policy and that kind of law; but because the government believes that there are benefits from foreign investment, it has adopted this selective approach which will allow it to review particular investments and ensure significant benefit to Canada.

Senator Flynn: You feel it gives a bit of discretion?

Mr. Gualtieri: There is a large element of discretion in this bill. That is agreed. On the other hand, it is not absolute discretion, because the minister is bound by the factors in section 2(2).

The Chairman: We will come back to that question. You say the minister is bound by these factors. Of course he is. They are exclusive. But we may never get to the point where you can contest as to whether he has followed these factors or whether he has introduced other factors.

Senator Connolly: Mr. Gualtieri, speaking some moments ago, about the situation in the extractive industries and resource industries, where prospective foreign investors said they wanted to go ahead with this, and then they were told they have got to go through the mill here, this is not a matter of a take-over, it is a matter of new business. I suppose this kind of thing happens very often. As I understand it, say International Nickel is foreign

controlled; it has exploration work going on constantly. Suppose they find a significant new mineral deposit and want to incorporate a company to develop that. It is not a question of whether they could do it or the Canadians could do it. It seems to me that the option is, either they do it or it is not done at all, because International Nickel owns the mineral deposit in question.

The Chairman: Senator, you stop right there. Supposing this foreign operation or enterprise in Canada has discovered this deposit, and supposing they decide to go ahead and develop it, without setting up a new company, they would run into difficulties with certain provincial laws. Quebec used to have—I do not think they have now—a law under which any mining company that is going to develop mining resources in Quebec had to be incorporated in Quebec.

Senator Flynn: Yes, they had, but I do not know that they have that still; I remember that it was a condition.

Senator Connolly: Could I follow up on that? What I want to point out is that, whether they decided to develop that property as a directly held asset of International Nickel, or by the incorporation of a subsidiary, and have it held that way, this is a matter of an internal, corporate business decision. Perhaps the capital that is going to come is going to come from some source that they might have in the United States. It is conceivable that no other capital might be available for it. There is a risk involved. The company is prepared to take it. It has confidence in the discovery and the value of it, and so on. It seems to me that the option there might be whether it goes ahead or not. If it goes ahead, it can only go ahead subject to the provisions of this bill, which might be a difficult thing for the minister to decide, because he might not think that the risk is worth it and then he would not hold perhaps that it was of significant value.

The Chairman: You figure out the position, Senator Connolly, of what we call consortiums and joint ventures, where not one foreign enterprise or company develops the plan for some part of Canada but you have a group of them getting together. When they get together in a joint venture, why, they are right under this bill now and they have to demonstrate significant benefit.

Mr. Gualtieri: May I comment on Senator Connolly's example? If I understood the facts correctly, I do not think the transactions he mentioned, of Inco opening up another deposit, would be subject to review, because it would not be establishing an unrelated business; it would just be expanding an existing kind of operation.

Senator Connolly: Even if they incorporated a new company to do it?

Mr. Gualtieri: Yes, I do not think incorporation is relevant.

Senator Connolly: Do the words "unrelated business" appear on the statute?

Senator Cook: It says "new".

Senator Connolly: It says "new".

Mr. Gualtieri: "Unrelated" is found . . .

The Chairman: It is on page 2, at the top.

Mr. Gualtieri: Yes, and on page 16, line 15.

Senator Connolly: Perhaps we had better look at page 4, "new business". I have not read it before, so I will read it out aloud:

"new business" means a business not previously carried on in Canada by the person or group of persons in relation to which the expression is relevant.

And you say page 16, do you?

Mr. Gualtieri: Yes, senator, line 15.

The Chairman: I think we have shaken this enough, but you know what some of our ideas are.

Here is a question I want to throw out. In the Income Tax Act, when we were attempting to define "small business", I think we finally settled for this, that if they earned up to \$400,000 they could still qualify; if they had accumulated over \$400,000 they became subject to the regular rate of tax. Here, in measuring businesses owned by non-eligible persons who want to come in and establish, if their earnings are not in excess of \$250,000 in a year, then they are not subject to the provisions of the bill. Is that correct?

Mr. Gibson: Mr. Chairman, that figure is in relation to acquisitions. It states in clause 5, page 14, that the bill does not apply and will not apply to acquisitions, with certain exceptions, where the gross assets do not exceed \$150,000, and the gross revenue does not exceed \$3 million; but these thresholds, if I may use that term, relate only to acquisitions as opposed to establishments.

The Chairman: How did you arrive at those figures? You just pulled them out of the air?

Mr. Gibson: I do not think those figures were pulled out of the air, sir, no.

The Chairman: Well, somebody thought of them?

Mr. Gibson: Yes, if I remember correctly, there was some substantial research done in an effort to set figures that were meaningful and yet, at the same time, not so high as to leave a substantial . . .

The Chairman: Clause 5 says that on acquisitions, where the gross assets of the business enterprise do not exceed \$250,000 and the gross revenues do not exceed \$3 million, a takeover of such a business by a non-eligible person would not bring this statute into play.

Mr. Gibson: That is correct, Mr. Chairman, but that is qualified. You will note that the opening words of that paragraph qualify that by reference to clause 31, subclause (3).

Senator Connolly: What clause are you looking at at the moment?

Mr. Gibson: Clause 5, subclause (1), on page 14, Senator Connolly.

Senator Connolly: That is only with respect to takeovers.

Mr. Gibson: That is correct.

The Chairman: All it says, or appears to say, is that you have to be in business in Canada in order to acquire another business in Canada under the terms of this exception.

Mr. Gibson: Yes, sir. The object of the exception was that if the establishment of new business rules with respect to unrelated fields by businesses currently operating in Canada is to be effective, quite clearly we have to screen acquisitions that are made for the same purpose as the establishment of a new business. In other words, if I may use this example, if General Motors wants to go into an unrelated business and is subject to the "significant benefit" test if it establishes a new business directly, then it must also be subject to the "significant benefit" test if, instead of establishing directly, it goes out and acquires a small business and expands it to meet its purposes.

The Chairman: Well, that is something we can pay some attention to, because I listened to what you said. I do not think that is the full interpretation of clause 5 in relation to clause 31. Once you limit the clause 5 exception to acquisitions or takeovers, then I think the real test is that you must not be in any kind of business in Canada before that time. Why that is necessary, I do not know.

Mr. Gibson: I would want to go through that again, if I may, senator, because I do not agree with that interpretation.

Senator Lang: Mr. Chairman, the witness mentioned that we are not cutting new ground here in terms of world attitudes or other countries and their policies.

No doubt, before drafting this bill the department did a lot of research on what legislation other countries have. Is this bill modelled on any existing legislation or combinations of existing legislation now in force in other countries?

The Chairman: In part, the previous bill.

Senator Lang: Well, let us say that bill, then.

Mr. Gualtieri: May I comment on that, Mr. Chairman?

The Chairman: Yes.

Mr. Gualtieri: As you indicated, senator, we did study very carefully the laws and policies of other countries, and, in fact, many other countries do operate a screening process, as this has been colloquially referred to, but their screening process usually is implemented in other ways. The most common method of implementing the screening process is through exchange control regulations. Canada, as you know, does not have exchange control regulations and, consequently, there would be no legislative base for operating that type of review or screening mechanism; and it is this bill which attempts to give the government the legislative base for taking the sorts of decisions which other countries often take under the guise of exchange control regulations, or sometimes purely on an administrative basis.

I should mention, just as a matter of interest, that the Australians obviously have read the so-called "Gray Report" and have studied this bill very carefully because they have now implemented a policy, and it has actually gone through their parliament, which is modelled very closely on this legislation.

Senator Connolly: Has that been passed yet?

Mr. Gualtieri: Yes, it has, sir.

Senator Molson: What proportion of their industry in Australia is foreign controlled, Mr. Gualtieri?

Mr. Gualtieri: I cannot answer that offhand.

Senator Molson: Have you a rough idea? Would it be 50 per cent or 40 per cent?

Mr. Gualtieri: I would say in the 20 to 30 per cent range. They are just beginning to become fairly concerned in Australia on this issue.

Senator Connolly: Especially in the resource industries, would you say?

Mr. Gualtieri: Yes, sir.

Senator Molson: Would that be split fairly evenly between the U.K. and the United States, do you think? I doubt very much if it is 80 per cent one foreign country.

Mr. Gualtieri: Agreed, sir. It is spread actually three ways: the United States, Britain and Japan.

Senator Molson: Oh, yes, Japan.

Senator Connolly: Again, on the resource side.

Mr. Gualtieri: Yes, it is heavily on the resource side.

The Chairman: In Canada it is heavily on the resource side, too, is that not right?

Mr. Gualtieri: Yes, but also heavily on the manufacturing side.

The Chairman: Well, it must be, because we needed it and nobody else would do it.

Mr. Gualtieri: Agreed.

Senator Connolly: That is what Senator Manning has already demonstrated many times in the Senate . . .

The Chairman: That is right.

Senator Connolly: — in respect of the oil and gas business in the west.

The Chairman: I was going to mention to the committee that I spoke to the minister about appearing. I offered him the opportunity to appear today, but, as I had indicated to him, the attitude that the then Minister of Finance, Mr. Benson, took when I invited him to come to kick off our proceedings when we were studying the tax bill was that he felt that it would be embarrassing to him to appear before the Senate committee before he appeared before the Commons committee; and Mr. Gillespie told me that he, too, would prefer to come to this committee after he had appeared before the Commons committee. They are sitting, I understand, on the 6th, 7th and 8th of June, so I gave him a date for the 13th. I said that by that time, after his experience in the Commons committee and the representations there, he should be in good form over here.

I also have a list of the briefs which have already been filed with the Commons committee. There are about 12 or 13 of them. We are suggesting to these people that they might care to send us copies of their briefs. If they wish to appear, we will hear them, but we are not going to subpoena them or do anything like that. They can come if they wish and we will be courteous to them.

Senator Connolly: Mr. Chairman, could you tell us the kinds of sources of representations that have been made to us?

The Chairman: I remember one of the names on the list of briefs filed was the Slater Walker people. They are U.K.-based and they carry on this kind of joint venture on a consortium basis in establishing and providing the money and buying out existing businesses, and all that sort of thing.

I can talk quite freely because I do not represent them; but I can see how such a company, and many other companies of that kind, would have serious problems in trying to adjust its operations, its use of money, its use of know-how and its experience in getting the best out of business operations. I can understand in what light they might regard this business of having to clear every transaction through the minister, because sometimes deals do not wait that long.

Senator Connolly: Are they interested in the manufacturing business?

The Chairman: I know they have substantial interests, but not necessarily controlling interests, in many countries.

Senator Cook: They are merchant bankers like the Rothschilds.

The Chairman: Basically, yes.

Senator Connolly: So they would not be inhibited in any way. They would go into resource industries perhaps as well.

The Chairman: You mean they would establish a resource industry in Canada?

Senator Connolly: This company you are talking about might finance it.

The Chairman: Well, as I understand it, they are making representations because they believe, and have been so advised, that they are affected by this bill and will have to clear any of their proposed operations from this time forward—and, of course, a lot of these people buy as well as sell. It will affect them on both sides.

Senator Connolly: Do you remember any other companies or groups?

Mr. Gaultieri: From memory, I can tell you some of the people who have presented briefs. They are largely business associations such as the CMA, the IDA—the Investment Dealers Association—the Canadian Bankers Association, the Canadian Bar Association.

Senator Connolly: No industries, as such?

Mr. Gaultieri: The Association of Insurance Companies have submitted a brief, as also, I believe, have the Federation of Sales Finance Companies. I am not certain about the latter.

Senator Connolly: In any event, all of these people have put in briefs. I understood you to say they have been invited to come here, if they so desire.

The Chairman: The CMA has been in touch with us already. We told them to write a request and we would fix a date. The International Petroleum Association has been asked.

Senator Connolly: The Canadian organization?

The Chairman: It is the Independent Petroleum Association of Canada. We have had inquiries from quite a number of businesses wanting to know what are our procedures, and what they must do to make a submission. We have simply told them that we will be holding hearings and they may submit a brief, if they wish.

Senator Macnaughton: The date for the minister is the 13th?

The Chairman: Yes, in the morning.

Senator Connolly: During the course of our last meeting there was mention of some kind of provincial interest in this bill. There was no suggestion that provinces should appear before the Commons Committee.

Mr. Gaultieri: I believe that all provinces were written to and invited to appear, but I do not know what the answers have been. All were invited.

The Chairman: I understand that New Brunswick had said, "Please count us out; we like foreign money."

Senator Molson: The position with regard to the Province of Quebec is fairly clear. Have they not said that they want free access to foreign investment?

Mr. Gaultieri: Their position is a little different. I believe they are mainly concerned about the operation of the criteria. They are concerned that the criteria will not recognize regional differences and will freeze the existing structure and distribution of industry across Canada. They want an assurance that, in applying the bill, regional differences will, in fact, be taken into account. I think that is a very sound position.

Senator Cook: What is the good of giving an assurance? Anybody who is going to bid will apply.

Senator Connolly: But that is not in the bill.

Senator Molson: That has to do with established policies.

The Chairman: Senator Cook, the only thing that is in the bill, at the level of the Governor in Council, is that if the minister makes a recommendation and recommends "No," my view would be that notwithstanding that recommendation, the Governor in Council could say "Yes." There is no law which says that the Governor in Council has to accept the recommendation of the minister. The question of getting an assurance from the Governor in Council is an unusual basis on which you might lean.

The committee adjourned until 2.15 p.m.

Upon resuming at 2.15 p.m.

The Chairman: Honourable senators, this afternoon we are going to resume our discussion of the subject matter of Bill C-132. I do not expect that we will conclude our discussions on this bill today. The present plan is that we might adjourn our discussion after an hour or so, as Mr. Gibson has to leave. Following that, we can deal with Bill S-4 and adjourn at around 4.30 p.m. for other very important business.

Senator Flynn: If we adjourn at 4.30 p.m. we will have put in a good day.

The Chairman: Mr. Gibson, as I said, will have to leave in an hour or so, so I will turn the questioning over to Senator Flynn, as he indicated there were some questions he wanted to ask.

Senator Flynn: I want to continue the discussion as to the constitutionality of this bill. I have not as yet read the opinion, signed by Mr. Gibson, which the Department of Justice presented to the Government as to the jurisdiction of the federal government in so far as the way in which the bill is drafted.

Are your thoughts on the bill introduced in the Quebec Legislature concerning insurance companies incorporated under the laws of the Province of Quebec, which will provide, if it is adopted,

that 25 per cent and not more of the stock of such companies may be held by what you refer to as non-eligible persons?

My question is twofold: first of all, whether you think this is within provincial jurisdiction and why it would be; and, secondly, if such legislation is in conflict with Bill C-132, which level of government takes precedence—in other words, which jurisdiction would supersede?

Mr. Gibson: Mr. Chairman, I must confess, although I am aware of the bill to which Senator Flynn refers, I am not familiar with all of the details of it.

Based upon the brief resumé which you have given of the provisions of that bill, Senator Flynn, it sounds to me as if it may represent, in the provincial sphere, legislation quite equivalent to the Canadian and British Insurance Companies Act in the federal sphere, which limits foreign participation in companies to which that act applies.

As I am sure all honourable senators are aware, the Parliament of Canada has enacted equivalent legislation in relation to banks and trust companies, and the Canadian Radio and Television Commission has a policy which, I believe, it follows at the direction of the Governor in Council in relation to foreign control in the broadcasting industry. So this kind of provision would not be new. Indeed, this bill was drafted specifically with that kind of legislation in contemplation, both at the federal level and at the provincial level.

Some provinces do have restrictions in particular sectors of the kind to which Senator Flynn referred, and other provinces, we understand, are contemplating that type of procedure. I would not look upon that kind of legislation as in any way being in conflict with the provisions of this bill. Therefore, to that extent at least, I would consider the objects to be compatible and the likelihood of confrontation of the two in the courts not to be significant.

Indeed, if I may take a moment, the inter-relationship of this bill, specifically in relation to acts of Parliament, is dealt with in clause 5 (3), on page 15. I recognize that that is not in the area of provincial legislation, but the object of this provision was to indicate, in the clearest possible terms, to take the example of a bank, for instance, that the mere fact that a bank complies with the provisions of the Bank Act does not relieve it of its obligation to comply with this act; and, conversely, the fact that it complies with the provisions of this act does not relieve it of its obligation to comply with the provisions of the Bank Act. The two are designed to stand side by side. I would adopt the same principle, the same reasoning, in relation to provincial legislation.

The Chairman: What is your authority for that, Mr. Gibson? The Bank Act is a special act of Parliament and all the provisions governing the Bank Act are in that special statute. Are you saying that there could be something in the Bank Act?

Mr. Gibson: I am not suggesting, Mr. Chairman, that anything in this act would clearly override, but I do believe, stating it on a theoretical level, that a clear and specific enactment, subsequent to the enactment of the Bank Act and clearly made applicable to banks, could override.

The Chairman: That is a generalization. Where is that in this bill?

Mr. Gibson: I believe that clause 5 (3) makes it clear, or at least it was the object of this subclause to make it clear, that we had no intention, indeed, of overriding the Bank Act.

The Chairman: I would say your reference to that clause is exactly the opposite. It is quite clear that this act is not intended to override any other legislation of the Parliament of Canada in respect of any particular Canadian business enterprise or class of Canadian business enterprises.

Mr. Gibson: Perhaps, Mr. Chairman, the other face of the coin is presented in clause 5(1) on page 14, which says:

This Act applies in respect of any acquisition of control of a Canadian business enterprise after the coming into force of this Act, . . .

In my opinion, referring back to the interpretation section, a bank is clearly a Canadian business enterprise and is not specifically within any of the exceptions. So, the two faces of the coin, if I may use that expression, are provided for in clause 5 in relation to the application.

Senator Flynn: There is a problem of a conflict between two acts of the Parliament of Canada. That is a problem which has to be settled by the Parliament of Canada. The bank Act was enacted under the provisions of the British North America Act, which states that the Parliament of Canada has jurisdiction over the banks. You could also have legislation concerning companies incorporated by act of the Parliament of Canada. That is all right. But my point is that provincial legislatures have jurisdiction over companies incorporated under a provincial act of Parliament. If there is a conflict, let us say, between an act of the parliament of Canada and an act of the provincial Parliament, what happens?

The Chairman: I would say, it depends.

Mr. Gibson: In one word, I think that is correct.

Senator Flynn: But if it is dealing with the same thing . . .

Mr. Gibson: To take a rather obvious example, Senator Flynn, if I may, quite clearly Parliament has authority to enact criminal law, to pick a specific head, that is applicable in respect of provincially incorporated companies.

Senator Flynn: Yes, I have heard that before!

Mr. Gibson: I am picking the most black-and-white example that I can think of at the moment.

Senator Flynn: I would say it is grey.

The Chairman: There is something that you have to add to what you have said, Mr. Gibson, and that is that if the criminal law, or the exercise of the criminal law, that you support is a colourable

attempt to acquire jurisdiction in a matter that really belongs to the provinces, then you are out of luck on all of the decided cases that I am aware of.

Mr. Gibson: Yes. I was assuming, for the purposes of my example, that a valid exercise of the criminal law. Let me, for the moment, take the position that this bill represents a valid exercise of legislative power by Parliament.

Senator Flynn: Criminal law.

Mr. Gibson: No, I will not try to pick a particular head. Let us assume that for the moment. If it were directly in conflict with provincial law, I think the federal law would prevail, if it were a valid occupation of a field by the federal Parliament. But there are two conditions precedent to that statement: first, a direct conflict; secondly, a valid occupation of a field by both levels of government. I do not contemplate a direct conflict between the particular bill which you cite before the Quebec legislature and this bill. Secondly, there is the issue we are talking about of whether this would fall within a clearly enacted statute by the Parliament of Canada.

Those issues are both open for debate, but I would hope I could dispose of this particular case that you cite by saying that, in my opinion, there would be no direct conflict of issue that would arise.

Senator Flynn: There is no direct conflict because, if I may suggest it, the contemplated legislation provides the same rule of 25 per cent. This bill would cover a provincially incorporated insurance company. It would, would it not?

Mr. Gibson: Yes, sir.

Senator Flynn: If the provincial legislation permitted, let us say, a 50 or 55 per cent foreign ownership of, say, a Quebec incorporated insurance company, what would be your answer?

Mr. Gibson: I would still take the view that there was no direct conflict because, in an appropriate set of circumstances, this bill would not inhibit that level of non-eligible participation in an insurance company in Canada. It would inhibit that level of participation only if there were no significant benefit to Canada, either in the establishment of the business or in the acquisition of it by the foreign holder. There is no categorical level of limited foreign participation established by this bill. The two statutes are really not directly on the same footing.

The Chairman: But, Mr. Gibson, we have two things that are well established. One is that the federal Parliament can exercise jurisdiction in the incorporation of companies, and it can regulate and govern the administration and the operation of those companies. On the other hand, the provincial parliament, under the B.N.A. Act, has exclusive authority to deal with the incorporation, regulation and administration of companies provincially incorporated. Are you suggesting that, because the provisions in the provincial legislation may be in line with or concurrent with what is in the province, that brings in and makes the federal enactment valid?

Mr. Gibson: No, sir.

The Chairman: I would not think that was supportable.

Mr. Gibson: I agree with you. I am simply saying the mere fact that they both cite percentages in relation to foreign participation does not mean that they are in direct conflict. I am not suggesting it means that that necessarily makes the federal legislation valid.

The Chairman: When you talk about direct conflict, surely, in order to enable a federal statute to encroach on the exclusive authority of a province you have to find some head in section 91 that overrides the provincial authority?

Mr. Gibson: Yes, sir.

The Chairman: Is it not that simple?

Mr. Gibson: Yes, it almost becomes that simple. I would just like to come back to what you said, which I think I am reflecting correctly, that the provincial legislature has exclusive authority with regard to regulation and administration of provincially incorporated companies. I think that has to be qualified: that is subject to validly enacted legislation of the Parliament of Canada.

The Chairman: It is scarcely necessary to make that qualification, because if the federal authority, under one of its heads, can legislate effectively in relation to any person, corporate or otherwise, anywhere in Canada, then that would prevail.

Mr. Gibson: Yes, sir.

The Chairman: One subject matter would be the criminal law?

Mr. Gibson: Yes, sir.

The Chairman: But it must not be a colourable effort.

Mr. Gibson: I agree wholeheartedly with that, which I think leaves us in the position where the real question that faces us today is whether this bill would represent a valid enactment within the jurisdiction enumerated in section 91.

Senator Flynn: Criminal law.

Mr. Gibson: I do not purport to rely exclusively on criminal law, as I said last week, when I indicated to you that, of course, if the validity of the legislation were challenged we would hang on to everything in section 91 that we could possibly rely on.

Senator Flynn: "Hang on" is a pretty good phrase.

Mr. Gibson: The heads I enumerated last week, and which I now reiterate very briefly today, would be the opening words, the "Peace, Order and good Government" clause, the "Trade and Commerce" clause, the alien head and the criminal law head.

The Chairman: I do not know just how far the law of gravity will pull you out of one of those positions. Take "Trade and Commerce." Up until very recently, certainly when the Privy Council was operating and reviewing Canadian judgments, there was no case in which the federal authority was upheld exclusively on the

basis of that head, "The Regulation of Trade and Commerce. It was only recently, in the Supreme Court of Canada, that there was a sort of indication that they are leaning towards giving a little broader interpretation to "the Regulation of Trade and Commerce." I am not sure how strong that limb would be.

Mr. Gibson: That is as good a reason as any other for not relying exclusively on that head.

The Chairman: I agree. On "The Criminal Law," there is a whole line of cases. I remember about the last one before the Privy Council was on aleomargarine. I went through that; I argued that case. The federal authority asserted that they had authority on the basis of the criminal law. The court said it was a colourable attempt to exercise control over something, the manufacture and sale in Canada of oleomargarine, which was purely a provincial operation. What is the purpose of this Bill? Let us settle it this way and see what is the real object of the bill. Are you going to read me the aims and purposes from the beginning? This is self-serving.

Mr. Gibson: I have no alternative, Mr. Chairman, if you ask me that question, but to read the act itself, since it purports to state on its face what its purpose is. I will do that, if you like.

The Chairman: Would you suggest that if this bill contained a clause declaring that the Parliament of Canada had exclusive jurisdiction to legislate in this field, that would make this bill valid?

Mr. Gibson: No, sir, I would never take that position.

The Chairman: Isn't this statement of aims and purposes the equivalent of a declaration?

Mr. Gibson: Yes. On the other hand, I think the question you asked me was whether that would be irrebuttable proof of jurisdiction. I simply take the position that it is evidence.

The Chairman: There are a lot of things that are evidence, but which are so obviously rebuttable that you need not waste much time on them.

Mr. Gibson: If the question you direct to me is, "What is the purpose of this bill? What is its object?" . . .

The Chairman: Yes.

Mr. Gibson: . . . certainly, from my position as an official, I do not think I can do much better than cite the purposes or objects recited in the bill.

The Chairman: Isn't the core or the whole guts of this bill; one, to control the acquisition of Canadian businesses by non-eligible persons; secondly, to control the establishment of new businesses in Canada by non-eligible persons; and, thirdly, to control an expansion, in a Canadian industry which is owned by non-eligible persons, into a field that is unrelated to the business they are then carrying on? Aren't these the three features of this bill?

Mr. Gibson: Those are the three primary features of the bill, yes.

The Chairman: The three features of the bill? Everything else is directed to providing machinery for carrying those objectives into effect?

Mr. Gibson: Yes, I would agree with that.

The Chairman: So you have to find your jurisdiction within that paragraph.

Mr. Gibson: I would agree, right away, that the control of federally incorporated companies is certainly in the federal authority and, to the extent that they want to control business and the shareholders of a federally incorporated company, I would think they have perfect authority to do so. We were sure of this when we were dealing with the Corporations Act, which applied that to the provinces, on the control of the shareholders, as to what they may hold and how they may qualify for entitlement to hold shares.

Senator Flynn: Put this bill another way. If this bill were before a provincial legislature, making no distinction between federally incorporated companies or provincially incorporated companies or any incorporated body at all, do you think this would be within or without the jurisdiction of the provincial legislature?

Mr. Gibson: To the extent that the legislature purported to apply it to the acquisitions or establishments that were inter-provincial in character or were intraprovincial in a province other than their own.

Senator Flynn: It would apply only within the province, to assert the situation within the province. Agreed?

Mr. Gibson: In the circumstances you cite, I think I would agree with you.

Senator Flynn: It could be Property and Civil Rights.

Mr. Gibson: Yes, I think that is correct.

The Chairman: Why is it not in this bill? To the extent that you are dealing with a provincially incorporated company, the exercise of the control by legislation over the administration of the company and the personnel of the shareholders and their qualifications to be shareholders, and their qualifications to be able to carry on business in the province—why is that not in the same category, why is it not strictly "Property and Civil Rights"?

Mr. Gibson: I think, Mr. Chairman, that in one aspect it is. I am simply arguing that in the context with which it is dealt with in this bill, and in the totality of the bill and its application, in another aspect it is not in Property and Civil Rights; that it can be found within the terms of section 91 as well.

The Chairman: Then we are chasing around the mulberry bush here. What headings? "Peace, Order and good Government"?

Mr. Gibson: Yes, I am not going to vary them before I cite them, or I would be in real trouble.

The Chairman: I think you are in real trouble in talking about criminal law.

Senator Flynn: If you look at this from the question of provincial jurisdiction, you say it is all right; and if you look at it from the federal point of view, you say it is all right too?

Mr. Gibson: Yes.

Senator Flynn: And you do not change a word in the legislation, you do not have to change a word?

The Chairman: We had the same problem in the Canada Corporations Act, on the question of securities law. Senator Flynn and other senators on the committee will recall this. We had this question of jurisdiction of the provincial securities commissions. The federal authority at that time did not claim any justification for the regulation of purely provincial corporations. But they said a federally incorporated company, we can control them administratively. These were the qualifications in that bill when it was passed, and this was recognized. You have that sort of going down parallel lines here as between federal and provincial.

How do we make sure, short of going to the Supreme Court of Canada on a reference? Have you any suggestion as to anything that might be added? We cannot declare in this bill that this is a "work" for the general advantage of Canada, because you have not any physical structure here.

Mr. Gibson: I do not think that would be a very politically acceptable attitude, in any event.

The Chairman: Then, where?

Mr. Gibson: I think, Mr. Chairman, that the short answer is that, short of restricting the application of this bill very significantly, there is no way that all lawyers will agree with certainty that the bill is, without question, within the authority of parliament.

The Chairman: Supposing you take the three words, "Peace, Order and good Government", do you claim that the three words are equally strong and supporting your position, or is there one particular word that you would take of the three?

Mr. Gibson: I would tend to rely on the second two.

The Chairman: "Order"?

Mr. Gibson: "Order and good Government". I do not think that we can look at this as a matter of peace or war.

The Chairman: You take a provincially incorporated company that is functioning within a province, are we ready to reflect on their ability to give good government and maintain order in the province?

Mr. Gibson: As you know better than I, senator, I am certain these words, and the opening words of section 91 in particular, have been the subject of a wide range of judicial pronouncements. The words "Peace, Order and good Government" tend to vary in their application and are not really confined to what one would describe as the ordinary usage of those words in their application.

The Chairman: The connotation of "Order" would be order in relation to the operation of a company?

Mr. Gibson: There is a line of thought which would suggest that the application of those words to a situation where it can be demonstrated it would be very difficult for the provinces, acting together, within their separate jurisdictions, to do the job adequately, would leave room for a federal jurisdiction.

Senator Flynn: Because there would be disorder?

Mr. Gibson: Whether or not it is a matter of disorder, whether or not it is a matter of good government, I would prefer not to try and pin it to a particular word.

Senator Flynn: It is very interesting, because we know several types of provincial government presently, and they may go in very different directions, and that would create disorder; and, on the principle that you have just enunciated, the federal parliament could come in and say, "We are going to change your legislation, and we are going to have uniform legislation all across Canada, for the sake of creating order".

Mr. Gibson: Whether or not it would create disorder is a matter of question. It is entirely possible to have sovereign governments in their own area of responsibility going in different directions, and I think that does not necessarily create disorder at all. What I am saying is that if the object of this bill is recognized as a nationally desirable objective, and if it can be demonstrated, as I think it can be, that it would be very difficult for the provinces, acting together, to accomplish the same objective . . .

Senator Flynn: Why?

Mr. Gibson: Because of the nature of industry and trade and commerce in Canada, it is not confined by boundaries, not even in the way it works; it does not tend to respect boundaries, geographical or otherwise. I think that with that kind of law, indeed, there have been arguments made that that kind of situation can give rise to federal jurisdiction.

The Chairman: Let us test that, Mr. Gibson.

Mr. Gibson: I would prefer, if I may, in so far as the words "Peace, Order and good Government" are concerned . . .

The Chairman: Let us take Saskatchewan, where they have a substantial potash development. I do not know whether it is exclusively there, but it is mainly in Saskatchewan. If Saskatchewan decided that the development of that potash required the input of foreign capital, because otherwise it would not be a practicable

thing to develop since the main markets are outside of Canada, would you say that, because there was not any potash in the other provinces, you would justify this legislation on the ground of order? I ask that because Saskatchewan could only regulate Saskatchewan potash, and there would not be any potash in the other provinces, so order would not relate to that.

Mr. Gibson: I would be inclined to agree, if the situation which you cite is correct; and if this legislation purported to be restricted in its scope to the potash industry of Saskatchewan, I would find difficulty in trying to justify that under the legislative competency of Parliament.

The Chairman: If a non-eligible person came into Saskatchewan under this bill and wanted to invest money in the development of the potash industry of Saskatchewan, he would have to establish significant benefit to Canada.

Mr. Gibson: If I may just reply to that, you are working from a very specific case and trying to analogize to the generality of this bill, and I have difficulty following that.

The Chairman: No. I was only working from your own statement that your concept of "Peace, Order and good Government" was something that the provinces, individually, just could not accomplish to the extent that one authority, the federal authority, could accomplish.

Mr. Gibson: Perhaps I did not state my proposition clearly. I was really endeavouring to present a statement by application to the generality of this bill. I am not suggesting, in relation to any specific industry or in relation to any specific segment of any industry, that a province or a collection of provinces could not perhaps accomplish the objective of this bill; but, in relation to the totality of what this bill seeks to do in relation to trade and commerce as a whole I think the argument is much stronger.

The Chairman: Do you not have to go so far as to say that it is essential to order in Canada that there be a federal enactment that will regulate both the dealings and those who may be shareholders of a business in Canada? Is that not what you are saying?

Mr. Gibson: I come very close to you on that statement, Mr. Chairman, but I would like to qualify it just a little, not in relation to who may be shareholders but to who may acquire control or establish.

Senator Flynn: Taking into consideration the policies and legislation of any province?

The Chairman: Yes. This is one of the factors now.

Senator Flynn: It is pretty hard to reconcile.

Mr. Gibson: I do not really find any direct conflict there, with all due respect.

The Chairman: It is nice to be so comfortable.

Senator Smith: Mr. Chairman, just from the point of view of its general application to certain of the provinces, in particular to Nova Scotia, I think what we have been listening to is a dissertation on whether or not the proposed bill would have the power to dictate to any one province that under certain circumstances, if American capital came in to purchase an existing plant, say, a rubber plant or a tire manufacturing plant, or came in to build an entirely new plant which would give competition to a rather large industry presently existing in that province, the federal government would have the power to step in and tell those who were running the province, for example, Nova Scotia, that, "This is the kind of legislation which we must use the power of to tell you that you cannot do such a thing." Is that what the bill has the power to do? I do not say that they would do that; but, if not, what has it to do with whether or not an industry is enlarged by foreign capital, or whether an entirely new industry is established with foreign capital?

Mr. Gibson: To take the specific example you have in mind, if this bill were enacted and if a tire manufacturer, who was a non-eligible person, proposed to establish a new business in Nova Scotia, that proposal would be subject to screening under this legislation and it would be subject to the "significant benefit" test, yes.

Senator Smith: And that would be under these two items that you referred to, "Order and good Government"?

Mr. Gibson: The legislative authority for that enactment would be under the heads of jurisdiction which I recited.

Senator Smith: There is no reference being made, apparently, to whether or not the power of the federal government to deal in money and banking is involved. Apparently they have nothing to do with it at all; and yet there is that element involved in such things where, under certain conditions, we are going to bring in additional foreign capital which is going to be a problem for the country as a whole. Under those conditions I could understand it, but not under "Order and good Government".

Mr. Gibson: If you are prepared to concede that as a head of jurisdiction which we might rely on, I would be very happy to rely on it.

Senator Smith: I am not conceding that at all.

Senator Flynn: It has been obvious since the beginning that you have been trying to find some word in the BNA Act on which to rely.

The Chairman: This looks like a section from the wilderness, doesn't it?

Senator Smith: The point I am trying to make is with respect to my own province. From the public service of Nova Scotia right up to the premier of the Province of Nova Scotia, it has been stated that it is none of the business of the federal authority to tell the province when they can or when they cannot do one of these ordinary things that do not relate to anything exclusively under the

federal jurisdiction. I wonder what kind of industry you could find in which there would be something you could use in order to put it through the screen, with the possibility always of saying, "No, this cannot be done!"

Mr. Gibson: The clear difficulty that I am faced with is that there is no single head of jurisdiction under section 91 of the BNA Act which I can point to and say, "This is currency and coinage," or "This is navigation and shipping," or "This is criminal law *per se*". There are no clear words. There are many aspects to the particular policy that this bill represents.

I am perfectly happy to agree with senators who indicate that one aspect of this bill clearly affects property and civil rights. I am just not prepared to acknowledge that that is the only aspect to the legislation and that, therefore, it is clearly beyond the authority of the Parliament of Canada. When I say that I look to a series of heads as supporting this legislation, it is clearly because there is no single head that I can say, "Four-square, it falls within that."

Senator Flynn: There are many divergent views in all of the provinces across Canada with respect to this problem of foreign control. For example, they say what they think in B.C. and they say what they think in Quebec, in Newfoundland and in Nova Scotia. It may seem to be only a problem of policy; but, in fact, if you are trying to impose a single rule on all of the provinces, even taking into consideration their own views which would create disorder, the effect of this legislation would really be to create disagreement among the provinces.

After all, you are referring to "Order and good Government", but you are trying to reconcile under the words "Order and good Government" opposite views, all shades of opinion all across Canada, and that might only have the ultimate effect of creating disagreement between the provinces.

The Chairman: Senator Flynn, I think Mr. Gibson has got himself to the position where he says that there is no particular head of federal authority which supports this bill; but the overall concept that is embodied in all of the authority that is given to section 91 of the BNA Act, the sum total of that, leads you to a federal authority to deal with questions of national policy. I think that is what he is saying. Is that right?

Mr. Gibson: Yes, sir.

Senator Flynn: But the result may be exactly the opposite.

The Chairman: The result may be disorder; it may well be disorder.

Senator Flynn: It will be disorder, because all of the provinces will be fighting.

The Chairman: Yes. You would have competition for foreign money.

Senator Flynn: If there is such a large spectrum of different opinions, I doubt very much that you can rely on the criminal law to enact that kind of legislation.

The Chairman: He has gone from that position now.

Senator Flynn: No, he is not renouncing it.

Mr. Gibson: I am not prepared to renounce any head. I think the chairman has correctly stated my position. What I am saying is that the whole of section 91 read together, including "Criminal Law", creates a jurisdiction or a climate for a national policy that is validly within the authority of the Parliament of Canada.

Senator Flynn: The criminal law itself is based on a moral principle that is generally acceptable; but this is not the case here.

Mr. Gibson: I would agree with you wholeheartedly, Senator Flynn, that if I said that this bill was criminal law, and if it is not criminal law it is not valid legislation, I would be dead wrong. I would not take that position.

Senator Flynn: You are reverting to the principle that you will hang on to anything that will support the bill?

Mr. Gibson: Yes, I am.

The Chairman: I think the answer is that somewhere, somehow in head 91, the sum total of everything stated there, there emerges a national policy and therefore jurisdiction.

Mr. Gibson: I think I agree with your words, Mr. Chairman, but I am not sure about the connotation.

Senator Lang: Coming back to the jurisdiction question, Mr. Chairman, and Senator Smith's hypothetical example, assuming a non-eligible person applied to start a new tire manufacturing business in Canada, and, applying the various tests, the minister came to the conclusion that this would be of "significant benefit" to Canada if established in Nova Scotia but not if established in Ontario, now, taking into account the regional considerations which you referred to, the tire manufacturer might be told that if he were to establish in Nova Scotia that would be fine. So the manufacturer goes in and establishes a business in Nova Scotia, and thereafter moves and sets up a branch operation in Ontario, which was his first and primary objective, in any event. Is there anything in the act to prevent him so doing?

The Chairman: No, it would be a related business.

Senator Lang: It would be the same business.

Mr. Gaultieri: May I make one comment on that, Mr. Chairman? The purpose of the review process, or at least part of the review process, is not to divert investment from one area of Canada to another, and the review authorities, the minister and cabinet, will examine a proposal that is put to it. So, if the tire manufacturer comes to the government with a proposal to establish in Ontario, it would be looked at as a proposal to establish in Ontario, and the "significant benefit" will be looked at in terms of the impact in Ontario and in the rest of Canada. If a manufacturer comes and seeks to establish in Nova Scotia, this will be looked at in that context, but there will not be an attempt to chivy and direct the

investment from one region of Canada to another for obvious reasons.

Senator Lang: But there is nothing to prevent that man from chivvying himself.

Mr. Gaultieri: Agreed.

The Chairman: But the minister might say, "Yes, I will approve of the setting up of a tire manufacturing plant in Nova Scotia, but just to forestall the possibility that having got a foot in the door you are not going to establish a related plant in Ontario, I want an undertaking from you." Now there is authority in the bill whereby the minister can demand an undertaking. Now, if that is not directing business, then I don't know what is.

Senator Cook: That would certainly please the Province of Ontario.

The Chairman: You would have confusion right away—disorder.

Senator Molson: It would make it easier for the Department of Regional Economic Expansion.

Senator Flynn: It is a smooth operation now!

Senator Smith: I have another question, Mr. Chairman. You know, sometimes non-legal minds can ask a question which is so stupid it is hard to answer. Maybe this is another one.

The Chairman: Well, the first one wasn't.

Senator Smith: On page 2, subclause 2(d)—one of the facets of the legislation indicates that what has to be taken into consideration would include the effect of the acquisition or establishment of competition within any industry or industries in Canada. Doesn't the bill then give the power to say to a province that does not have much industry, "We have lots of that kind of industry in Quebec or British Columbia, so there is no national room for expansion," even though the long-term aim might be to supply an export market? This brings me back to the question of power. Has the federal government power to tell the provinces that they cannot have a plant of any kind?

The Chairman: Well, I cannot answer that, but I can say that this bill purports to say that.

Senator Flynn: It would run counter to the combines legislation.

The Chairman: I have a question to which I want an answer from either Mr. Gibson or Mr. Gaultieri.

Before the federal authority recognizes any economic policy enunciated by the legislature of any province, what is the form in which that enunciation must appear—a statute, a speech by the minister or what? There is nothing in the list of factors to indicate in what way you make this determination that this is an industrial and economic policy enunciated by the legislature of any province.

Mr. Gibson: There is certainly nothing in the statute which limits the form in which the enunciation will take place.

The Chairman: It might be a very irrational statement—perhaps made by somebody in opposition; I don't know.

Mr. Gibson: I agree, Mr. Chairman, that there is a judgment to be made as to whether the enunciation represents, indeed, an enunciation of a policy of a legislature or of a government.

Senator Flynn: It would be difficult to adjust this legislation in any way with all the shades of governments you have in the provinces. You have, let us say, a government on the right and you have a government on the left, and you have a government in the centre. As far as economic policies are concerned, I do not see how you can define a standard rule right across Canada with the present situation prevailing in all the legislatures of the provinces.

Mr. Gaultieri: That is one of the reasons why subsection 2(e) was expanded to include the reference to the provinces.

Senator Flynn: But you have to have one standard, and you are suggesting that you would have a standard in British Columbia and another in Newfoundland and another in Quebec. Then you are faced with the problem raised by Senator Smith and Senator Lang. It is an impossible situation.

Senator Macnaughton: Mr. Chairman, I understand that now that we have come this far we have both order and disorder.

The Chairman: That is right. Mr. Gaultieri, the limitation in subsection (2)(e) of section 2 about policy enunciated by the legislature of any province limits the policy, as a factor that the minister must look at, to a province. He may only find it in one province. He would have scope to act on it if he found any province that took a view that he was ready to say "yes" or "no" to.

Mr. Gaultieri: But it has to be the province that is significantly affected by the investment.

Senator Cook: But if it is to the benefit of Canada, then all provinces are affected.

Mr. Gaultieri: That depends on the industry, the size of the investment, the location and a whole host of economic factors.

The Chairman: So if Senator Smith's province, Nova Scotia, wished to establish a tire manufacturing business with foreign capital and the Government of Nova Scotia legislated or declared its policy to be to encourage foreign money to enter, this is a fact on which must govern the decision of the minister. Assuming that is the only province in which the establishment of a tire manufacturing business would significantly affect the economy, then that is the only place. He does not look to a tire manufacturing plant operating in Ontario, in Quebec or in the Maritimes.

Mr. Gibson: In evaluating the first four factors, though, I think that those would be a valid subject for the minister's consideration, Mr. Chairman.

The Chairman: Well, you read it one way, and we may read it another. I do not suppose we will get anywhere further on it, except that it does limit the factors to which the minister must pay attention. He must take into consideration industrial and economic policy objectives enunciated by "the government"; that is the federal government.

Mr. Gualtieri: No, that is not the federal government.

The Chairman: "... legislature". Then why do they use the words "government or legislature"?

Mr. Gibson: I think "government" is intended to describe the executive government, as opposed to the legislative arm of the province.

Senator Flynn: It might be found in a speech of the Prime Minister, the Minister of Finance or treasurer of the particular province.

Mr. Gibson: Yes.

Senator Flynn: That can change from year to year.

Mr. Chairman: It sometimes does.

Mr. Gualtieri: As a practical matter, Mr. Chairman, may I say that the method by which the federal government will apprise itself of the policies of the provincial legislatures or governments will be through the consultative mechanism which Mr. Gillespie has undertaken to establish? It is true that federal officials will be endeavouring to keep informed of legislation that affects economic policies and the positions of all provincial governments in this area, as we do now in the Department of Industry, Trade and Commerce, DRIE and so on. However, in addition to that, because of this undertaking to consult provinces in connection with particular transactions, obviously the province will make its policy views known. I do not consider that as a practical matter to be a very serious problem.

Senator Flynn: But it cannot really result in a uniform or national policy; I am quite positive you cannot assert that.

Mr. Gualtieri: In my opinion, it can result in a national policy, but with applications which recognize the particularities of the various regions of Canada.

Senator Flynn: It would become a tower of Babel in no time.

Senator Molson: Are the economic policy objectives often enunciated by the legislature, as distinct from the government of a province?

The Chairman: I think more likely and more effectively by the government of the province.

Senator Molson: Is it logical to enlarge this with additional words such as these? It seems to me that I read it originally as meaning "the Government of Canada and the legislatures of the provinces". Now I see I am wrong.

The Chairman: If you are reading it in the manner suggested by Mr. Gualtieri, it could occur in this way: There could be a statement of government policy or a bill passed by the legislature, in which event it would be the legislature which was speaking, and the minister would have to pay attention to that and take it into consideration as an enunciation of government policy.

Senator Flynn: If there were a conflict between the two, of course, the legislation would prevail.

The Chairman: Oh, yes.

Senator Flynn: Until it was changed.

The Chairman: Yes. We have shaken this particular aspect up pretty well and I think Mr. Gibson may breathe a sigh of relief as he has to attend another appointment. We have quite a distance to go before we will have this bill in proper perspective as to whether the approach to their objective is the right one goes too far, is too complicated or there is a simpler method. It is too early for us to reach any conclusion with respect to that.

My suggestion is that since we will hear more witnesses and will have advisers shortly, we might at this time adjourn further consideration until next Wednesday. Then we can now deal with the act to amend the National Parks Act. Is that agreed?

Hon. Senators: Agreed.

Senator Flynn: I think we should thank the witnesses for their patience.

The Chairman: Well, they are getting to know our views.

The hearing adjourned.



FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

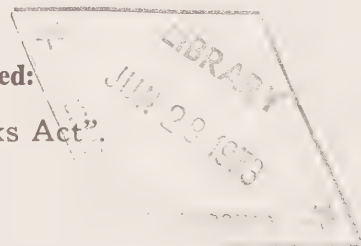
The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 5

WEDNESDAY, MAY 30, 1973

First Proceedings on Bill S-4, intituled:
"An Act to amend the National Parks Act".

(Witnesses—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of
Tuesday, May 22nd, 1973:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Laing, P.C., seconded by the Honourable Senator Connolly, P.C., for the second reading of the Bill S-4, intituled: "An Act to amend the National Parks Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Laing, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, May 30, 1973.

Pursuant to notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 3:20 p.m. to examine the following Bill:

Bill S-4 "An Act to amend the National Parks Act".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Buckwold, Connolly (*Ottawa West*), Cook, Flynn, Gelin, Hays, Laing, Lang, Macnaughton, Molson, Smith and Walker. (14)

Present, but not of the Committee: The Honourable Senators Cameron, Carter, Lafond, Macdonald, Manning, Sparrow and van Roggen. (7)

In attendance: Mr. R.L. du Plessis, Acting Parliamentary Law Clerk, Department of Justice.

The following witnesses were heard:

Indian & Northern Affairs Department:

Mr. J. Nicol, Director General,
National Parks Branch.

In attendance:

Mr. S. Kun, Director,
National Parks Branch;

Mr. R. Maslin, Acting Chief,
Planning Division.

Alpine Club of Canada:

Dr. D.R. McDiarmid, member.

In attendance:

Dr. J.R. Weber, member.

At 4:30 p.m. the Committee adjourned to Wednesday, June 6, 1973 at 9:30 a.m.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, May 30, 1973

The Standing Senate Committee on Banking, Trade and Commerce met this day at 3:45 p.m. to give consideration to Bill S-4, to amend the National Parks Act.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we now have Bill S-4 to consider. Senator Laing is the sponsor. Is there anything you wish to add to your comments in the Senate?

Senator Laing: I think that probably some senators would wish to ask questions of the witness.

The Chairman: Do you have an opening statement, brief and to the point, that you would care to make, Mr. Nicol?

Mr. J. Nicol, Director General, Parks Canada, Department of Indian and Northern Affairs: Senator, I had not planned on making an opening statement. The basic philosophy of the National Parks Act is unchanged by the amendments contained in the bill.

There are two main thrusts in the current bill: one is to add a number of new parks to the schedule; the other is to pick up a few items which we classify as housekeeping, such as on-the-spot payment of traffic tickets in the parks, which has been a nuisance to the RCMP and a headache to us. Generally, there are no other significant changes.

We have changed the definition of "public lands" because some of the park agreements make provision for the land to revert to the province concerned if Parliament decides that it is no longer needed for national parks.

Another provision provides for parcels adjacent to existing parks, with the agreement of the province concerned, to be added to national parks by Order in Council.

I do not believe there are any other significant clauses in the bill, senator, but I would be happy to answer any questions.

The Chairman: Why did it become necessary to include this great number of schedules, really defining the boundaries of all the parks? Did you not know what they were before?

Mr. Nicol: A few of the boundaries are changed. Prince Edward Island is changed and when Terra Nova was proclaimed in 1958 the boundary was not included. The legal description of the park must be included as a schedule to the National Parks Act.

Senator Connolly: Is that provided in the act, that these must be included in schedules to the act?

Mr. Nicol: I am told, sir, by the law officers that it is a necessity that legal descriptions of the lands involved be included.

Senator Connolly: I can understand that, but is there a requirement to append it to the legislation? I would think that is an administrative function that could be handled by the Department and when the boundary varies from time to time you could vary the description.

Mr. Nicol: There are two aspects to this, sir. The first is that we felt that Parliament—I know my minister feels strongly about this—should agree to any deletions from national parks.

There is, and continues to be, a need for certain minor boundary adjustments. There are several that I can think of where the existing boundary cuts across the middle of a lake. This makes no sense to us. Either a lake should be within the park totally, or totally outside the park.

The Chairman: Since you define what is national parklands, the authorities which you have exercised in relation to the use of those, and what might be offences, could more easily be established. There might be some dispute about boundaries. This is making the assurance doubly sure. The scheme of the bill is to establish national parks.

Senator Flynn: Not the amendments. I understand that the amendments are to give power to the Governor in Council to change the boundaries of the parks already in existence.

Mr. Nicol: There is provision to make additions but not deletions.

Senator Flynn: If you create a new park, you would have to introduce new legislation.

Mr. Nicol: That is right.

Senator Connolly: In any event, the land registry system would reflect whatever description you showed to Parliament.

Mr. Nicol: That is right, sir.

Senator Connolly: People might have an interest in boundaries, but they can always get it from the registry office or the land titles office.

The Chairman: Mr. Nicol, I understand there is some criticism of this bill. What do you know about it? First, is there criticism? And, second, if so, would you care to make any comment?

Mr. Nicol: I have followed the debate in the *Debates of the Senate*. There are several aspects related to the comments made. One senator discussed the clause whereby additions can be made to existing national parks by order in council with agreement from the province. The inference was drawn that we could expropriate people's land and add that to the park without the people really having much say.

While theoretically that is possible, I think, gentlemen, you will have to understand that public servants cannot exercise the rights of expropriation. Neither can my minister exercise them solely. It has to be done in concert with the Department of Justice and the Minister of Justice. Again, any additions to the park will be made with the full knowledge and agreement of the province concerned, because while we will own land title, in almost all cases, the province will have to transfer administration and control by order in council, and the Crown federal will have to accept by order in council.

The Chairman: The authority is in the Governor in Council to authorize the minister to expropriate.

Mr. Nicol: The amendment concerned here authorizes the Governor in Council to add lands, but there is a whole procedure that goes along with that, Senator Hayden, which has many safeguards all along the way.

I was rather surprised on a few points: the list of employment figures on Kejimikujik National Park, one of the new parks in the province of Nova Scotia. I would like to set the record straight as far as our records are concerned. At the moment there are 22 permanent employees working in the park. During the visitor season this figure increases to 50 or 60. The comparison was drawn with Kedge Lodge which, in its heyday, employed 40 people, but in 1964, we are informed, they employed 18 people. The attendance figure for the park for 1968-69 was 58,751.

Senator Smith: That was the first year of operation?

Mr. Nicol: That is right. In 1969-70 there were 104,195 visitors; in 1970-71, 125,228; in 1971-72, 140,489; and for the visitor season from April to October in 1972 the figure was 136,469.

During that time we counted camper party nights. Our camper parties vary between three and four people. In 1970-71 we had 28,000 people; in 1971-72, 49,000; and in the visitor season of 1972, approximately 51,000.

As far as payments made, or costs to date are concerned, our operation and maintenance budget for the present fiscal year will be \$401,700. The capital expenditure from 1965 to the end of last fiscal year was \$4,236,985. The capital expenditure proposed for the current year is \$221,000.

I am not at liberty to say what is in the estimates or the program forecast, but merely say that we are about half done, as far as capital works are concerned.

The Chairman: We have several witnesses here today. We have representatives from the Alpine Club of Canada, a Mr. McDiarmid and Mr. Weber. I expect they are here not to praise everything about the parklands, but to raise some points of criticism for discussion. I am trying to anticipate whether you know what the objections are; or perhaps we should call the witnesses and then have you provide the answers. I shall call Mr. McDiarmid.

Mr. McDiarmid, will you please tell us who you are?

Dr. D. R. McDiarmid, Member, Alpine Club of Canada: I am corresponding member of the conservation committee of the Alpine Club of Canada. The committee itself is situated in Edmonton, but I am the corresponding member in Ottawa. In the last few years the Alpine Club has taken an interest in the establishment of parklands in Northern Canada and has submitted brief material to the department concerned on areas within and adjacent to the three proposed northern national parks. Through the clerk of the committee I have submitted copies of those briefs, as well as proposed extensions to two of them.

The Alpine Club of Canada was founded in 1907, I believe, and has about 1,700 members and a further 1,000 associates. Although the main purpose and function of the club is to climb, it is also concerned with the preservation of the mountain heritage of our country and the flora and fauna associated with it.

Concerning the three northern national parks, in general we support the department in the parks proposal. We have some feelings that slight modifications—in one case, not quite so slight—to the boundaries of two of them would be appropriate, namely, Baffin Island and Nahanni Parks. An outline of those proposals was submitted to the clerk in two short briefs. I am sorry, but I am afraid that we did not submit them to the department. We intended to later.

The Chairman: What I am really trying to get at is your purpose in appearing as a witness in relation to this bill. Are you appearing to oppose anything in this bill, or is it simply that you think some of the boundaries should be changed?

Mr. McDiarmid: Our purpose is to support the bill and to propose some enlargement of two parts of it.

The Chairman: Do you not think that that is more properly an element of administration in the beginning?

Mr. McDiarmid: Well, we saw in this bill, as you mentioned a few moments ago, a complete description of the boundaries. We felt that this was one of the topics to be discussed in your consideration of the bill.

Senator Flynn: You cannot change the boundaries at this stage.

Mr. McDiarmid: We cannot propose amendments here?

Senator Flynn: Perhaps what would be relevant, Mr. Chairman, would be if this witness could tell us whether or not he feels that it is sufficient for the Governor in Council, if there is a decision to change the boundaries, to have clear title to the land as provided for

in section 3.1 and where agreement has been reached with the province concerned, to make such a decision; or whether there should be a provision stating that an opportunity would be provided to all persons who would be directly affected or interested by the addition of the lands to express their views. I think that would be relevant to the question.

The Chairman: Yes.

Senator Flynn: I do not think we can change the boundaries at this time. I should like the witness to tell us whether it would be a good thing to afford an opportunity to those who are directly or indirectly concerned to express their views before a decision such as the one which is contemplated in this legislation is made.

Mr. McDiarmid: By people directly concerned, do you mean the owners of the land?

Senator Flynn: Yes, owners of the land or a club such as yours, or the Chamber of Commerce operating in that area, and so on and so forth.

Mr. McDiarmid: It would be difficult to answer that question, not knowing the full details of how one goes about doing this, in the sense that one has negotiations with the provinces. Presumably, these would go on, at least in the beginning, in confidence.

Senator Flynn: That is the point.

Mr. McDiarmid: Not being a lawyer, nor having any training in law, I find it somewhat difficult to give a reasonable reply to that question.

Senator Flynn: But you come before us now and suggest that the mechanism which is provided for in this bill for adding to already existing parks has resulted in determining limits with which you do not agree. Is that your point?

Mr. McDiarmid: We do not feel that they are quite broad enough.

The Chairman: You think the boundaries should be enlarged?

Mr. McDiarmid: In certain specific areas which are dealt with in the brief material.

Senator Flynn: So, if there was provided for in the legislation an opportunity for you to present your views to the minister concerned before a decision is made by the Governor in Council, do you not feel that that would be a good thing?

Mr. McDiarmid: Are you suggesting that it be made known

Senator Flynn: For example, there could be a notice in the *Canada Gazette* stating that it is the intention of the minister to recommend to the Governor in Council that the boundaries of such-and-such a park be changed and that all those interested or who wish to express their views will have the opportunity to do so on a certain date before a certain body.

Mr. McDiarmid: It seems reasonable to me, but I am afraid I cannot anticipate the difficulties which might arise.

Senator Flynn: Well, you certainly are not going to solve the problem by just saying that you are not satisfied with the boundaries as set out in the bill.

The Chairman: I think we should hear from Mr. Nicol. He has an understanding of this problem.

Mr. Nicol: Clause 11 of the bill, Mr. Chairman, states:

The Governor in Council may, after consultation with the Council of the Yukon Territory or the Council of the Northwest Territories, as the case may be, by proclamation, set aside as a National Park of Canada, under a name designated therein, the lands described in Part I, II or III of Schedule V to this Act or any lands within the boundaries of the lands described in Part I, II or III of that Schedule, and upon the issue of a proclamation under this section, notwithstanding any other Act of the Parliament of Canada *the National Parks Act* applies to the National Park of Canada so set aside as it applies to a park as therein defined.

So what the bill does is authorize the Governor in Council, by proclamation, to officially create these parks.

Senator Flynn: You mean in the Yukon Territories and in the Northwest Territories?

Mr. Nicol: Yes. The previous clause, senator, covers the establishment of National parks in the Provinces. Therefore, by proclamation, the Governor in Council can set aside the lands described therein or such lands as the Governor in Council may decide upon.

Under clause 2 the Governor in Council can add to those, with the agreement of the Council of the Territories, after the park is created.

Senator Flynn: With the agreement of the provinces.

Mr. Nicol: Well, in this case it would be the Territories, because Mr. McDiarmid was talking about the parks in the Yukon Territory and the Northwest Territories.

Senator Flynn: But with respect to the Yukon Territory and the Northwest Territories it would be after consultation only.

Mr. Nicol: That is right, senator.

Senator Flynn: That is quite different. Under clause 2 the Governor in Council must have the agreement of the appropriate province, whereas with respect to the Territories the Governor in Council need only consult with them.

The Chairman: Let us go at it this way. To which area are you addressing yourself, Mr. McDiarmid?

Dr. McDiarmid: Specifically, the Northwest Territories.

The Chairman: So this clause that you read, Mr. Nicol, states that the Governor in Council may, by proclamation, acquire lands or extend the boundaries of parks in that area.

Mr. Nicol: The Governor in Council can extend the boundaries, by proclamation, after the park has been created.

The Chairman: Yes.

Mr. Nicol: The descriptions of these parks will have to come back to Parliament, once they are finalized, so that the official description can be included within the schedule.

Senator Flynn: But it would be difficult at that time for Parliament to change the boundaries, even if a committee of the other place or a committee of the Senate were to hear representations in that respect. It is a technical problem to decide where the boundaries should be set. My point is that representations such as the one being made by Mr. McDiarmid should be made before the legislation is introduced. I would suggest that there be some mechanism in the act which would afford an opportunity to interested parties to make representations before the legislation is introduced.

Mr. Nicol: We have already had some twenty briefs for and against boundaries in the northern parks.

Senator Flynn: This is before the legislation was drafted?

Mr. Nicol: That is right, senator.

Senator Flynn: You had briefs, but did you hear from the people?

Mr. Nicol: In certain cases, yes, where they asked for an audience.

Senator Flynn: Do you not feel that it would be a good thing to institutionalize these hearings? I realize this is probably a matter of policy.

The Chairman: There is machinery in the act to provide for an enlargement of a park.

Senator Flynn: Yes, but only with the agreement of the appropriate province or after consultation with the Councils of the Territories.

The Chairman: We are talking about the Northwest Territories.

Senator Flynn: Yes, and it is only after consultation with the Council of the Northwest Territories.

Mr. Nicol: We feel that it is very important that we have the agreement of the provinces with respect to boundaries within the provinces. Due to the differences between provincial and territorial affairs, the decision was and, again, this was a legal point - that it should be consultation.

Senator Flynn: I do not think Mr. Nicol can give an opinion, because it is a matter of policy. I would certainly like to know from the minister whether or not he would object to an amendment which would afford an opportunity to the public at large to express their views before a decision is made under section 3.1 of the National Parks Act.

Mr. Nicol: The problem we face in that respect, Senator Flynn, is that some of these amendments may be as in the case of one which we are discussing now with one of the provinces - very minimal. The one under discussion now concerns three-quarters of an acre. Do you suggest a public hearing for three-quarters of an acre?

Senator Flynn: You will not have to, because nobody will bother coming; but if you double the park, that is another thing.

Mr. Nicol: I quite agree. I am convinced that whatever minister is in the chair at the time, he would make very sure that the province concerned, and certainly the people concerned, if the area is of any significance, would be aware of what was happening.

Senator Flynn: I suppose you have not read the article appearing in *Le Devoir* this morning?

Mr. Nicol: Yes, sir.

Senator Flynn: It read:

Pillés, exploités, déportés d'une façon inhumaine.

Mr. Nicol: It was on my desk almost as soon as the paper hit Ottawa.

Senator Flynn: It may be right or wrong. I am not taking this for granted, but I was just suggesting that if you had the mechanism to hear the people before the final decision is made, you would probably be able to settle a lot of these problems in advance.

Mr. Nicol: I take issue with the comment of the author of that article, because you will recall that Forillon was established after the Fred Plan for the lower St. Lawrence. There were local committees set up in a number of locations there, and a main committee. Arising out of the committee's discussions, they recommended to both governments that a national park be created there. This point seems to have been missed entirely in that article. The people were more thoroughly consulted in that area than in any other national park that has been created in my memory.

Senator Flynn: I take your word for it, but it proves my point that if there were an official hearing you would not be faced with distortion of the facts, as you suggest there is in this article.

Mr. Nicol: There is no question about it, in creating a new park we have a different atmosphere than in the early 'sixties or late' fifties. Some of the negotiations had been going on since 1962 or 1963, and reached a culminating point in recent years. We have had discussions with other federal departments, and with some of the

provinces, on how we can approach this from a sociological impact point of view.

Senator Flynn: Mr. Chairman, the speed with which the other place is working does not make the adoption of this bill in the Senate very urgent, and I was wondering whether it might not be a good thing for the witness to consult with the minister to see whether he would not have an amendment to clause 2, to provide a third paragraph, which might read: "An opportunity has been afforded to all persons who would be directly affected by the addition of the lands to express their views thereon at a public hearing of which due notice has been given," or something like that, in substance.

The Chairman: I think, before we move further on that, Senator Laing would like to add something.

Senator Flynn: I am just putting the question; I do not want the answer now.

Senator Laing: I was going to ask the witness this. Surely, the Alpine Club of Canada has been in pretty close contact with the National Parks people in Ottawa over a period of years? Did you in respect of this area make the representations you are now making?

Dr. McDiarmid: Yes.

Senator Laing: And they were not accepted?

Dr. McDiarmid: We submitted brief material for the Yukon park and the two Northwest Territories parks. Some of them were submitted fairly close to the announcement of these parks. In that sense, some of the decisions were probably already taken by the time those briefs were received. We had verbal communications at various times.

Senator Laing: Not only your own organization, but others in Canada are very interested in parks, how they are managed, what is encouraged within them; and I would take it that in a matter such as you are suggesting, the boundaries of parks, you would make fairly constant representations to the department or to the minister.

Dr. McDiarmid: Our committee is not that old. We have, as you say, been making submissions. We looked at the announcement, we looked at the bill, and made an assessment of the boundaries in terms of our own interests. We have written two short briefs for extensions to two of them. What I have submitted to this committee are copies of two of the briefs we submitted to the department, plus further comments.

Senator Laing: I do not want to encourage a large number of witnesses, but it would not take much encouragement to bring them here. There are quite a number of people interested in subtracting from the plans rather than adding to them, for various reasons—such as, mining people, people who view with alarm the closing out of any prospect of getting great power sources in the North, and so on.

Senator Smith: The lumber industry.

Senator Laing: And individuals who do not want to leave their present housing under any circumstances. I think your representations today are made at the wrong time. I think you should have made them beforehand.

Dr. McDiarmid: Which we in fact did.

Senator Laing: And you failed.

Dr. McDiarmid: As far as being here today is concerned, we are new at this business; we are not really aware of all the points.

Senator Laing: I think you have to reconcile yourselves to the fact that there will be amendments to the act in the future, and you had better be in on it again at that time.

Dr. McDiarmid: I am no expert, and you know more about this than I do, obviously, but our feeling was that since the schedules were here in the bill they were open for discussion.

Senator Connolly: I think the witness is entitled to come here; I think we all agree on that. I wonder whether he could enlighten us on this point. What are we talking about? Are we talking about large areas? Can you give us any idea how much land is involved, what is the character of the land that you want to see added to the parks, whether there are any people who live in those sections?

Dr. McDiarmid: As far as we know, nobody lives in the areas that we propose. One of them has to do with an extension to the Nahanni National Park. It is basically an area northwest of the boundaries in the bill. It is an area called the Ragged Ranges; it is a granitic intrusion, and an area of very striking mountainous scenery, which has been compared in literature to Yosemite Park in the United States.

Senator Connolly: How much land is involved?

Dr. McDiarmid: There is an extension of about five hundred square miles to the area proposed in the bill creating a park of about 1,840 square miles.

Senator Laing: I take it it is south of the Canol Road, is it?

Dr. McDiarmid: I am not sure where the Canol Road goes. It is to the east of Tungsten.

Senator Laing: East of Cantung.

Dr. McDiarmid: The eastern boundary of our proposed region would be south of the Nahanni River, further east of the head waters, where it enters the park proposed in the bill.

Senator Connolly: Do you know who owns that land now?

Mr. Nicol: It is crown land.

Senator Connolly: You say you want to add 500 square miles to a park that has already been proposed at 1,840 square miles?

Dr. McDiarmid: Yes.

Senator Connolly: I think, Mr. Chairman, that proposal having been made, and the witness having indicated where the land is, in due time in the course of these hearings officials of the department could comment upon the proposal made by this witness. This is not the only proposal which you make?

Dr. McDiarmid: That is our proposal concerning the Nahanni.

Senator Connolly: Is there anything more you want to say?

Dr. McDiarmid: Yes, concerning the Baffin Island park.

Senator Connolly: Is there anything more you want to say about that first park?

Dr. McDiarmid: Other than that there is the mountain scenery; some of the alpine land and tundra in the region are very delicate, for which the growing season is very short. Some controls do not exist in regard to future vegetations which are likely to be there. Those of the present time might cause permanent damage to the flora of the region.

Senator Laing: This has been revealed very recently as one of the most heavily mineralized regions in the Cordillera, with an immense amount of activity.

Dr. McDiarmid: You are referring to the Placer Development Company discovery?

Senator Laing: Placer, and three others.

Dr. McDiarmid: The feeling is that the land should be made some form of preserve and prospecting should be allowed, and if over a reasonable time it is found . . .

Senator Laing: You would permit mining in the park?

Dr. McDiarmid: I am aware of the suggestion of prospecting, that we make a reserve out of the park.

Senator Laing: And make a final decision later?

Dr. McDiarmid: That exploration techniques be carried out in such a way as not to cause significant damage to the area as far as park value is concerned, and if exploration does not in fact outline minerals, then we continue the purpose of making it part of the park.

Senator Connolly: Have you any indication that, in fact, this is the idea in the minds of the people in the department who are working on this?

The Chairman: Senator, we have Mr. Nicol here and I think it is a question he should answer.

Senator Connolly: I want to ask this question of this witness. Do you know whether there is that?

Dr. McDiarmid: No.

Senator Connolly: Behind this decision to limit the bill and exclude these 500 square miles?

Dr. McDiarmid: No, no.

Senator Connolly: Do you know of any existing mineral deposits there that might ultimately be explored?

The Chairman: Senator Laing has said yes, it is a rich mineral area.

Mr. Gibson: Nearby.

Dr. McDiarmid: I am only aware of one, the Placer. I would suspect there are other companies in the region farther in the northwest again. They might go 60 miles from the northernmost part of our boundary. I personally discovered that just recently. We feel under those circumstances the sort of two-step approach would be appropriate. In so far as our understanding or knowledge of the considerations which led the department to fix that boundary, we know of nothing.

The Chairman: We have Mr. Nicol here, Maybe Mr. Nicol can tell us where the boundaries are put.

Mr. Nicol: The choice of the park boundary is the most difficult thing my officers face. Obviously, the national park system cannot protect all the landscape of Canada. The national parks system is giving this protection to the most significant areas of Canada. The area chosen for the Nahanni national park followed a very intense study that Drs. Scotter and Simmons made for the Canadian Wildlife Service, and Dr. Derek Ford, the spelcologist, or "cave-man". He reported that it would take several seasons before we could determine the boundaries. We followed the boundaries suggested by Scotter and Simmons to a certain degree. We found that the mountain crests are much easier boundaries to recognize and control than the toes of the slopes or river boundaries, because frequently you may maintain control over a river on one side but you have absolutely no control over what happens on the other side. Thus considerable damage to the area within the park could occur from activities on the other bank.

Northwest of the northwest boundary of the park, there are additional hot springs, but as we have already a significant representation of hot springs in the present boundaries, we felt that there was a limit to how far we could go. So basically the boundary was drawn after consultation with senior officers of the Canadian Wildlife Service and some university professors such as Dr. Derek Ford.

The Chairman: Is there any further point you want to make, Dr. McDiarmid?

Dr. McDiarmid: I might make reference, if the committee feels it appropriate, to our other comment, concerning the Baffin Island National Park.

Senator Cameron: Before you leave the other point, did I understand Mr. Nicol to say that as far as they know there are presently no people living in the proposed addition to the park?

Mr. Nicol: I have not seen the documentation they may have with them this afternoon. As far as I know, there have been a few prospectors in there in the last year, but generally in the areas he described it is not occupied on a permanent basis and, to my knowledge, it had not been seriously prospected up until the end of last year. I do not know whether anyone has come this year or not.

Senator Laing: How far south of the Canol Road is it?

Mr. Nicol: I would hazard a guess, it is only a guess, that it is somewhere between 50 and 100 miles.

The Chairman: Have you anything further, Dr. McDiarmid?

Dr. McDiarmid: There are three areas that we are concerned with. These were included in the original brief to the department. There is an area of an island from Merchants Bay to the east of the proposed park called Cape Searle. This Cape Searle is north-east of Padloping Island which contains a petrel-fulmar colony. Researchers and geologists who have visited this cape have found it certainly a very distinctive and a very important colony. We feel that it is most definitely a significant geographical and biological feature of the region. The area there is very small; the cape is quite small. We feel it should be included. It is probably as significant a geological and biological feature as there is in the purported park. As the cape itself is rather small in area we feel it should be included.

The Chairman: What is the acreage you are talking about?

Dr. McDiarmid: I am afraid I have not the exact information, but it is a very small area compared to the whole park.

Senator Connolly: How large?

Mr. Nicol: It is just a few square miles.

The Chairman: What about this?

Mr. Nicol: Cape Searle was mentioned after the announcement. I must admit we did not look at it when we were looking at the park which we have described here. The reports we have, indicate it is, from an ecological point of view, quite significant. We are in the process of studying to see whether there are other important areas which so far we have not located. It may well be at some future date this small area might be added. We do not have information sufficient to designate or recommend it now.

Senator Laing: You can say that the witness' representations will be noted?

Mr. Nicol: Yes.

Senator Connolly: In the meantime, there is no danger of deterioration or damage there?

Mr. Nicol: I am not too sure. There is a potential down in that area, near there, for some mining activity, I am told.

Senator Connolly: How soon would it be before you make your own survey and decide?

Senator Laing: Mr. Chairman, you want to adjourn soon. I should hope that we may draw to the attention of Mr. Nicol and his people the debate that took place in the Senate. I hope they read it. The debate was colourful enough to make me remark that I was happy I was no longer minister and was only trying to take the bill along.

There is a considerable amount of unhappiness in various sectors with respect to the administration of parks. That is not new. I know all about that. But I would like to know that it has been drawn to the attention of the department.

Senator Manning, for example, said that no great encouragement is being given to people of simple tastes and pockets. This gets back to campgrounds and so on.

You know, if the parks were badly administered, which they are not, a bill like this would be held up by the senators until those conditions became better. While it is not related to the actual contents or the wording of the bill, it is very pertinent to the administration of parks in Canada . . .

The Chairman: We have nothing before us to show that there is anything wrong with the administration.

Senator Laing: Except the evidence of senators who spoke in our house and to whom representations had been made by various people.

The Chairman: Well, the proper place for those representations to be made is to the department.

Senator Laing: Yes; this is my point. I hope that this has been carefully studied by the department.

Senator Buckwold: Mr. Chairman, as one involved in a fairly critical statement of parks administration with reference to Waskesiu, Prince Albert National Park, I would point out that we grasp at any opportunities we can get to draw to the attention of the authorities that this is a serious problem, and I will not hesitate again to say to Mr. Nicol and his planners that people are very unhappy with what is happening in Prince Albert National Park. I was there just over the long weekend, and I wish somebody would at least assure the people that everything is not falling apart there, because that is the story that keeps coming out of the place.

I know, Mr. Chairman, that it has nothing to do with this bill, but I suppose regional interests demand that we draw it to their attention.

The Chairman: I think that we can do two things: we can pass the bill; we can also direct the attention of the department to the problem by addressing to them a copy of Senate *Hansard* and a copy of the transcript of what has been said here.

Senator Flynn: I suggest we wait until next week before passing the bill, so that the department may consider the suggestions or comments which have been made today and give us a reply with regard to them and with respect even to the suggested amendments.

Senator Laing: The Yukon Chamber of Commerce, I believe after discussion with you, Mr. Nicol, and with the Commissioner, agreed on the boundaries as they were reduced to some 8,000 square miles.

Mr. Nicol: That is correct.

Senator Laing: They were reduced by 2,400. In other words, you took out those properties where some fellows came and said, "There's gold in them thar hills!"

On May 15 they wrote me again on the matter of electrical power in the area. George Smith, who is a very competent engineer, has been up there and he has been making suggestions again.

Now, my concern, Mr. Chairman, is whether or not these people should have the opportunity of making representations before we pass the bill.

The Chairman: We can simply adjourn until next Wednesday, then.

Senator Laing: I know another man who says he has a gold mine up there and that he wants \$19 million for it. I don't know why he stopped at \$19 million.

The Chairman: If he waits a few more days it may be up a little more, you know.

Senator Smith: Mr. Chairman, Mr. Nicol gave us some figures earlier. He volunteered the information because of criticism, and it is encouraging for us to know that there are some directors of some important government departments reading Senate *Hansard*. He gave some figures for the record, and I am not so sure what they include. Mr. Nicol mentioned that employees had gone up from 22 to 60 during the season.

Mr. Nicol: That is permanent and seasonal employees.

Senator Smith: Is the difference between 22 and 60 the seasonal employees?

Mr. Nicol: That is right.

Senator Smith: Does it also include jobs which you provide for students?

Mr. Nicol: No, it does not include the conservation corps.

Senator Carter: Mr. Chairman, I have two questions I should like to ask the witness. He may need to get information from the department for our next meeting.

Before I ask those questions, I should like to make one observation with regard to what you said to the effect that people

should make direct representations to the department with respect to their complaints.

I know for a fact that a group of people came up here from Nova Scotia and saw the officials of the department. They had a very poor reception and went away most disappointed. In fact, they were shrugged off and went away with the impression that it was just a waste of time to come to see officials. That is why I think they wanted to appear before our committee, because they feel that then at least they would have a forum where they could be listened to.

Senator Carter: Now, my first question is about Kejimikujik National Park. Did the original agreement with the province with respect to that park include a marine section?

Mr. Nicol: No, this was not a part of the agreement. There was a discussion of the possibility of having a marine satellite which could be operated in conjunction with Kejimikujik, and there was a federal-provincial survey team which did a survey to identify a potential area.

Senator Carter: I am not interested in the details; I just wanted to know whether or not that was in the agreement.

Mr. Nicol: No, it was not part of the agreement, senator.

Senator Carter: My second question is: Have any studies been carried out with respect to the Eastern Shore Park, or Ship Harbour Park, to determine what economic benefits would accrue to the people from the establishment of that park there, and what impact this park would have on the people resident in the area?

Mr. Nicol: The answer is, not to that specific area. We have studied three parks in the Atlantic provinces from an economic impact point of view. In each case the park came out with a positive economic impact.

Senator Carter: But no studies have been made with respect to how many jobs would accrue or how many jobs would be destroyed, what the economic benefits would be to the area or to the province as a whole, or whether this land could be put to better use other than as a park? No studies have been made along those lines at all?

Mr. Nicol: What we did was to translate our experience elsewhere to the area in studying it. I think you have to understand that on the Eastern Shore there was an agreement to agree—an agreement in principle.

Senator Carter: By whom?

Mr. Nicol: Between the province and the federal government. The final area which may be determined may be a little different from what is there now. I do not know. I do know that discussions with the province are continuing and that again one of the problems we face in this particular area is the fact that original discussions started back in 1962 and have been going on intermittently ever since and there has been quite a sociological change in the interval. We are quite aware of that now, and we are taking steps to minimize the impact on the people.

Senator Carter: The boundary is set, is it?

Mr. Nicol: It is subject to review.

The Chairman: I believe it has been suggested that we adjourn for a week, during which time Mr. Nicol can study this whole matter so that he will be able to talk to us about all the representations that are in the Senate discussion on this bill and what took place today. Shall we adjourn until next Wednesday?

Senator Cameron: Mr. Chairman, I have just come back from the West and there is a good deal of unhappiness in Banff, and particularly in Jasper, about 1,200 people being moved out without any consultation through the changing of the CNR divisional point. I do not know the facts of the situation, but I do know there is a great deal of unhappiness and I feel that an opportunity should be provided for a discussion on this matter before this committee.

Mr. Nicol: Mr. Chairman, before you adjourn, might I clarify this point?

The Chairman: Certainly.

Mr. Nicol: Senator Cameron, on the one hand we are damned for not telling anybody what is going on, but then when we do give them advance notice of what we are thinking, we are criticized as well.

The situation here is one whereby the department has indicated a course of action which is open to it, and I think the minister

touched on that in his statement in the committee of the other place. But before we get to the point where final decisions are taken, we have very definite plans to consult with appropriate groups, and I would not be surprised if the provinces were involved in this discussion as well.

Senator Cameron: This is the kind of situation, I think, that needs to be discussed in some detail so that the people will know where they stand. This may not be the place where this should be done, but, in introducing the bill, Senator Laing said there were two phases: the acquiring of more land for the park—and I am all for that; and then he said something about provisions for examining the housekeeping of the parks. Now, this may be something of a paraphrase of what he said.

The Chairman: Well, we may end up studying that. I do not know where the discussion next week will lead, but we will probably get some answers.

Senator Connolly: I think Mr. Chairman, that I should like to see Mr. Nicol coming back to deal specifically with the two suggestions made by this witness from the Alpine Club. While he did give it some general consideration, I think the two points might be specifically dealt with at the next hearing.

The Chairman: I expect Mr. Nicol will come back all prepared next week.

The committee adjourned.



FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

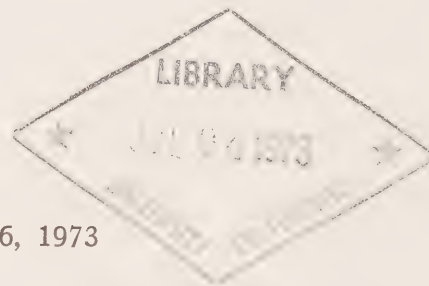
The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 6

WEDNESDAY, JUNE 6, 1973

Second Proceedings on Bill S-4, intituled:
"An Act to amend the National Parks Act".

(Witnesses—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of
Tuesday, May 22nd, 1973:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Laing, P.C., seconded by the Honourable Senator Connolly, P.C., for the second reading of the Bill S-4, intituled: "An Act to amend the National Parks Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Laing, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, June 6, 1973.

Pursuant to notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to examine the following Bill:

Bill S-4 "An Act to amend the National Parks Act".

It was proposed by the Honourable Senator Blois and resolved that

Senator Connolly (*Ottawa West*) be Acting Chairman of the Committee for this day.

Present: The Honourable Senators Connolly (*Ottawa West*) (Acting Chairman), Beaubien, Blois, Cook, Desruisseaux, Flynn, Gélinas, Hays, Laing, Martin, Molson and Smith. (12)

Present, but not of the Committee: The Honourable Senators Cameron and Norrie. (2)

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Indian & Northern Affairs Department:

Mr. J. Nicol, Director General,
Mr. S. Kun, Director,
National Parks Branch.

In attendance:

Mr. R. Maslin, Acting Chief,
Planning Division.

Alpine Club of Canada:

Dr. D. R. McDiarmid, member.

Statistical data with regard to parks areas both provincial and federal was ordered to be printed as Appendix A to these Proceedings.

At 12:00 noon the Committee adjourned until 2:30 p.m. this day.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, June 6, 1973

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give further consideration to Bill S-4, to amend the National Parks Act.

Senator John J. Connolly (*Acting Chairman*) in the Chair.

The Acting Chairman: We have for consideration this morning Bill S-4, an act to amend the National Parks Act. We have with us witnesses from the Parks Branch, and others. I understand that members of the committee would like to attend their caucuses today. There is a possibility that we might be able to complete consideration of this bill by 10.30 a.m. or 11 a.m. If that is so, unless there is some objection, we might then adjourn the committee and resume at 2.30 p.m. to consider the subject matter of the foreign takeover bill.

I do not know if witnesses are yet here in connection with the foreign takeover bill. In discussing this matter with me, Senator Hayden thought it might be useful, since we are going to have the minister here next week, if we omitted the jurisdictional problem today and had officials take us through the mechanics of the proposed legislation in order that we might have a clear understanding of its provisions. Then we could deal with the jurisdictional problem later.

In addition, Senator Hayden asked me yesterday if, in his name, I would send a telegram to the premiers of all the provinces with reference to our work on the subject matter of the foreign takeover bill. I will read the telegram in English, although the French wording is available. It reads:

The Standing Senate Committee on Banking Trade and Commerce now considering provisions of Bill C-132, Foreign Investment Review Act. Would appreciate advice if your government proposes representations with reference to Bill and particularly clause 2(2) (e) and if your representative proposes to appear would appreciate advice as to convenient time.

That telegram went out yesterday, and so far as I know we have not yet received any replies.

I should also advise the committee that we are honoured this morning to have with us a delegation from the Alberta Legislature. I would ask each member of the delegation to stand as I call his name. As honourable senators know, this is part of a program which the federal branch of the CPA has been running for a number of years, and we are very happy to welcome our distinguished guests from the Legislature of Alberta, some of whom are no doubt known to members of the committee.

First there is Mr. William Diachuk, MLA, Deputy Speaker; then Mr. A.J. Dixon, the former Speaker; Mr. H. Ruste, MLA; Mr. L. Buckwell, MLA; Mr. William Jamison, MLA; and Mr. L. Young, MLA.

It is perhaps fortuitous that we are considering a bill that may be of interest to our distinguished guests, in that we are about to discuss the National Parks Act. Our guests will see the kind of work that we do here. I do not know whether they will be impressed. We are not impressed, but we sometimes produce pretty good reports and achieve pretty good results. In any event, you are most welcome this morning.

Hon. Senators: Hear, hear.

Senator Laing: Mr. Chairman, before we commence, I should like to draw your attention to the fact that I have received some calls from the Yukon in respect of the area of the park. I have received representations from the Yukon Chamber of Mines, and the Whitehorse Board of Trade. I advised them that they should wire our chairman—I was told last night that this had been done—asking that they be heard a week from today in order that they might make representations respecting the borders of the park that are proposed in the Yukon.

I have received a letter from a law firm in Vancouver representing a mining firm in the Yukon which proposes to make representations seeking exclusion of an area in which they claim there is a prospective gold mine.

I would hesitate to complete the bill without hearing at least the first two groups—namely, the groups from the Yukon—who indicated in their wire to the chairman that they could not be present today but that they could make it a week from today. We could conclude all matters with the exception of hearing their representations.

The Acting Chairman: We will proceed this morning to hear the witnesses who are available, and we shall then adjourn the hearing until the people who have just been mentioned have a chance of coming here and making their representations. I do not know how quickly we are required to pass this bill. If they can appear next week, I think the committee would be quite happy to hear them.

Senator Laing: I think the Yukon people indicated this in their wire to Senator Hayden.

The Acting Chairman: I have not seen that wire—but then I have been in office for only 10 minutes!

I would now call upon Mr. Nicol, Mr. Kun and Mr. Maslin. Dr. McDiarmid is here from the Alpine Club of Canada.

Is there anyone present in connection with the foreign takeover bill? Perhaps the clerk could tell me whether they understand that we will be sitting this afternoon. I will have the clerk inform Mr. Gualtieri and Mr. Gibson. Would 2.30 p.m. be a convenient time for the committee to sit this afternoon?

Hon. Senators: Agreed.

The Acting Chairman: I would therefore direct the clerk of the committee to advise the witnesses concerned to be present at 2.30 this afternoon.

Mr. Nicol, there were some questions left over from last week's meeting of the committee. Perhaps you could deal with them first, and we will then proceed with further questioning.

Mr. J. Nicol, Director General, Parks Canada, Department of Indian Affairs and Northern Development: It is my understanding, Mr. Chairman, that I was asked last week to come back with comments on the Alpine Club proposals which were made to the committee last week. Is that correct?

The Acting Chairman: I think that is so.

Mr. Nicol: The Alpine Club discussed two areas, one being Nahanni National Park. They also recommended that we include the Ragged Mountain Range, northwest of the park proposal.

The Alpine Club had previously made this submission to the department in February 1972, and it was acknowledged in March 1972. We did not include the Ragged Mountain Range because preliminary reconnaissance surveys by the Geological Survey of Canada noted the occurrence of molybdenite and the possibility of tungsten; and at the request of the Geological Survey of Canada and the Northern Economic Development Branch of our department, we agreed not to include the area.

However, there is some question whether we would have included the area in any event, because the Nahanni National Park proposal and reservation was basically to preserve the South Nahanni River and its most spectacular reaches between Virginia Falls and its mouth.

The hot springs and the great cave system along the way are a secondary reason. The Ragged Mountain Range provides attractive landscape, but really does not fit into the parks basic purpose. There are other locations in the North which have equally or more spectacular mountains, and it may well be that another mountain range might be considered at a later date.

The Acting Chairman: Adjacent or adjoining the present area?

Mr. Nicol: Not necessarily. We feel there are other means, either in legislation or coming before legislators, to preserve some of these areas such as the Norah Willis Michener Park Game Reserve created by the Northwest Territories. The Department of Environment is

considering creation of National Wildlife areas where reasonable activity is, in their view, compatible with the objectives of the National Wildlife areas.

The Acting Chairman: Mr. Nicol, if a certain area is set aside in the territories for a wild life area, it is not necessarily a park. Is that an area in which game is protected, but in which the development of mineral resources could proceed?

Mr. Nicol: I am not an expert of what they propose in the Department of Environment, Mr. Acting Chairman, but it is my understanding, from Canadian Wildlife Service, with whom we work very closely, that they do propose that controlled activity could take place in such an area.

The Acting Chairman: But it is not quite as sterilized as a park area.

Mr. Nicol: I do not like to think of parks as being "sterilized."

The Acting Chairman: But you understand what I mean when I use that word.

Mr. Nicol: If you mean that preservation is the main theme, to a degree, yes; but the possibility of commercial activity is dependent upon its effect on what they are trying to preserve. For instance, there are whooping crane nesting grounds in Wood Buffalo National Park. Had they created such a reserve, they obviously would not want any development activity, because these birds are close to extinction and they are affected by man's intervention.

The Acting Chairman: I suppose there are degrees of protection to which areas can be subjected, and perhaps the greatest protection comes from declaring the area to be a park. But there are other forms of protection that can do what might be described as an adequate type of job. Is that so?

Mr. Nicol: There is a whole gamut of devices. There is the game sanctuary which is created federally and provincially. There are provincial park systems. There are conservation authorities which do give certain types of protection to land.

Under these various devices, the possibility of other activity—by other activity I mean other outdoor recreation—such as mining and logging can take place under controlled circumstances. I would think that from my knowledge of how these other areas are managed, they do exercise quite close controls on such activities to make sure that pollution and massive destruction does not take place.

The Acting Chairman: Am I right in saying that all the land that we are talking about is Crown land?

Mr. Nicol: Yes.

The Acting Chairman: Is there any privately-owned land?

Mr. Nicol: In the area I am talking about, it is all Crown land.

The Acting Chairman: So that the Crown has various methods of exercising control over a development of any kind.

Mr. Nicol: That is true. It is particularly true, of course, in the Territories where there are land control regulations.

The Acting Chairman: So that even if an area is not designated as a park there is still the protection that might be required for that area, or the game, or the wildlife, or scenic beauty, within the power of the Crown?

Mr. Nicol: To varying degrees, yes.

Senator Hays: Mr. Chairman, when you are designating parks, it is a pretty nebulous sort of thing. Perhaps it would be helpful for the committee to see maps of the particular areas we are talking about. I, for one, am not familiar with these areas. I am not familiar with their accessibility, roads going through, and all that sort of thing. It is very difficult, once the boundaries are set, to have them changed.

The Acting Chairman: There were maps distributed when we last discussed this bill. Unfortunately, I do not see any here this morning.

I am told by Mr. Nicol that there will be maps produced in a few moments.

Senator Molson: I think maps of a more general nature would be more helpful than the sketches we had last week.

Mr. Nicol: Yes.

The Acting Chairman: They will be produced in a few moments.

Senator Flynn: Are there any guidelines within your department as to the establishment of a national park? For instance, the provincial governments establish parks. Are there any guidelines within your department vis-à-vis the policies of the provincial governments in the same respect? For example, the Province of Quebec Laurentide Park is called a national park, although it is a provincial park.

I realize the two systems serve the same purposes, but I am wondering if there are any guidelines within the federal department vis-à-vis respective provincial departments.

Mr. Nicol: The national parks system should have a representative from all the main physiographic regions in Canada, and that is certainly our goal. The provincial parks systems are complementary. We work very closely with the officials in the various provincial parks branches, or their equivalent. There is an annual conference of the senior officials, of which I am a member, called the Federal-Provincial Parks Conference. At these conferences we work towards co-operation and co-ordination. I can think of no area in Canada where we are in competition with each other. I do not think that is a healthy situation. We need far more outdoor recreational land than we currently have, and the combined efforts of the federal and

provincial systems will be hard pressed to meet the demands in the year 2000.

Senator Flynn: I know there is no dispute. I suppose your department would be inclined to create a national park in a province where the provincial authority has not taken the initiative. In other words, the creation of national parks by your department would be proportionate to the initiative of the individual provinces? If the provincial government puts aside sufficient lands for parks purposes, your department would be less inclined to create a national park in that province.

Mr. Nicol: That is quite true, Senator Flynn. The other thing I think we have to keep in mind is that a national park within a province is only set up after agreement has been reached with the particular province concerned. As part of the annual Federal-Provincial Parks Conference we have an information system which includes an annual inventory of parks resources giving an up-to-date picture of the conservation situation in Canada. To this date we have developed a very high degree of co-ordination and co-operation with the provinces in this regard, so I doubt if there would ever be any problems.

Senator Flynn: I am not suggesting that there is a problem. I am simply trying to clarify the procedure. For instance, in the province of Quebec, outside of the Gatineau Park which is included in the National Capital Region, Forillon National Park, which is described in Bill S-4, is the first park created by the federal government.

Mr. Nicol: The second one is La Mauricie. The agreement with the Province of Quebec has been signed and the land has been transferred.

The Acting Chairman: I understand, Mr. Nicol, that either before or as a result of this bill there will be at least one national park in every province and in the two Territories?

Mr. Nicol: That is correct.

The Acting Chairman: I have two questions. The first question is with respect to how many parks we are talking about as being under the control of the federal government. My second question is whether or not there are any provinces which do not have provincial parks.

Mr. Nicol: It depends on what you define as parks, Mr. Chairman. I do not believe there is any province which has not got a provincial park in some form or other.

Senator Smith: Mr. Chairman, are we through with this particular phase of the questioning?

The Acting Chairman: I should like to follow this question further, if I may, Senator Smith.

Senator Smith: Fine.

Senator Molson: You say that there are different forms of parks, Mr. Nicol, included as provincial parks. Do you mean parks with greater and lesser degrees of control and activity, and this sort of thing?

Mr. Nicol: I think, Senator Molson, it is a matter of size and activity within the park. Some of the smaller provincial parks are not much larger than camping grounds while others have a whole series of activities. For instance, the Mactaquac Provincial Park in New Brunswick has a number of water-based activities, as well as a golf course and camping facilities. Some of the other provinces, notably Quebec, Ontario and British Columbia, have quite large areas which are managed for somewhat similar purposes as the national system.

Senator Molson: What about the province of Saskatchewan?

Mr. Nicol: Saskatchewan has a number of provincial parks, as does the province of Alberta. The province of Alberta is very fortunate in having an excellent director of parks, Mr. Drinkwater.

The Acting Chairman: Would the committee find it helpful if, for the next meeting a week hence, Mr. Nicol brought with him a list of the federal parks in each province and area and the corresponding provincial parks? I think it would be helpful if we had such a list.

Mr. Nicol: If you will bear with me for a moment, Mr. Chairman, I believe I have that material with me.

The Acting Chairman: Yes, certainly.

Senator Norrie: And the areas covered by each park also, Mr. Chairman.

The Acting Chairman: Yes.

Senator Blois: Does the federal government assist the provinces in improving provincial parks, either by buying land, or whatever? A good many parks, as you know, are not on Crown land. I am wondering how the cost is shared as between the provincial and federal governments?

Mr. Nicol: In creating a national park?

Senator Blois: In creating a provincial or a national park, I am thinking specifically of a provincial park.

Mr. Nicol: In creating a national park where the land is other than in Crown ownership, we participate to the extent of 50 per cent of the cost of acquiring the lands required. Of course, we pay the entire cost of developing the park and the operating costs. This 50 per cent includes the administrative costs in acquisition of the lands covering such things as lawyers' fees, survey fees, and such other administrative costs as occur.

In the case of a provincial park there are, in certain areas, programs under the Department of Regional Economic Expansion

where assistance is given and has been given to the provinces in setting up their parks. The Mactaquac Park, which I mentioned a while ago, is one in that category. It was part of the total Mactaquac power development and redevelopment of that area.

Senator Blois: May I ask another question, Mr. Chairman? If the provincial government wished to create a provincial park do they discuss the matter and obtain approval from the federal officials before doing so?

Mr. Nicol: No.

Senator Blois: They are free to do as they wish?

Mr. Nicol: Certainly.

Senator Blois: But if they are going to spend moneys, I take it they would have to contact the federal officials as the federal government would be paying half of the costs involved.

Mr. Nicol: I am sorry, I misunderstood your question. I thought you were speaking of provincial parks. The way we normally do this—and the way it has been done since I have been involved in the program—is that we conduct a joint survey of the province or an area of the province with our counterparts in the provincial government and identify the areas which both crews think should be within a national system. In every case, if it is agreed to by both my minister and the respective provincial minister, we share 50 per cent of the costs involved.

The Acting Chairman: That is only with respect to a national park?

Mr. Nicol: That is correct.

The Acting Chairman: Senator Blois' question is directed to a provincial park.

Mr. Nicol: We ourselves have no provision for assistance with respect to the provincial parks systems. In setting up provincial parks, however, in certain areas the Department of Regional Economic Expansion does give some assistance.

Senator Flynn: In the form of grants?

Mr. Nicol: Sometimes it is in the form of grants; sometimes in the way of technical assistance, which generally involves our branch.

Senator Molson: Can there not be cross-purposes in that instance? If you have more than one department assisting in the creation of some form of facility could there not be cross-purposes?

Mr. Nicol: Not really.

Senator Molson: That is a very happy state of affairs.

Mr. Nicol: At the present time we are not meeting the public demand for recreational land. More importantly, we have 220

million people to the south of us who are now looking to Canada regularly to provide such an experience.

I recently returned from Europe and the advantage of the currency situation is such that the people there indicated to me the likelihood of substantial numbers coming to Canada seeking open space in future years. We are getting large numbers of Japanese people coming to the national and provincial parks in Western Canada. So that it behooves governments at all levels to have these areas available for these people, to say nothing of the people of Canada who are looking for the same experience.

The Acting Chairman: You are talking now about tourists coming here for holidays?

Mr. Nicol: That is right.

Senator Molson: That was not quite my point. My point is that if your department and, say, the Department of Regional Economic Expansion combine in doing somewhat the same thing in different ways, is there always the same purpose and the same effect in carrying out the respective functions?

Mr. Nicol: Yes.

Senator Molson: What correlation is there between the two?

Mr. Nicol: Any moves which the Department of Regional Economic Expansion might make in the provincial park system are done with our full knowledge. We have a very good working relationship with officials in that department.

Senator Molson: That is really my point. There is co-ordination.

Mr. Nicol: Yes.

The Acting Chairman: And does the same apply with respect to departments other than DREE, if there are any others involved?

Mr. Nicol: Oh, yes.

The Acting Chairman: If there are any others.

Mr. Nicol: The Department of the Environment, especially the Canadian Wildlife Service, the Fisheries Service and Forestry Service are working with us regularly.

Senator Molson: Some little while ago Mr. Nicol referred to activities such as logging and so on. That made me wonder what is the policy with regard to control of the growth and so on, and logging in national parks? Those areas cannot just be left alone. Who is responsible for the overall supervision of the condition of the forests in the park?

Mr. Nicol: We do with our own people, but where we feel there is a need for advice we get it from the Canadian Forestry Service and the Department of the Environment.

Senator Molson: When, for example, a forest is mature or over-mature, is some activity carried out in that case?

Mr. Nicol: Not necessarily. Section 4 of our act is pretty clear, that such a logging activity would be repugnant.

Senator Molson: Even if the trees are over-mature?

Mr. Nicol: That is right.

The Acting Chairman: You mean you just . . .

Senator Molson: Let them rot?

Mr. Nicol: Yes.

The Acting Chairman: And there would be no re-forestation, no attempt to maintain the standard within the forest?

Mr. Nicol: We have very few even-age forests; but if we did, yes, we would let them go. I qualify my remarks on this. If disease occurs in the forest within a national park, which is going to affect very substantially the enjoyment of the park or alternatively is likely to go out into the afforested areas of the province, very definitely we fight this disease immediately.

Senator Molson: How many forest fires do you have on the average each year?

Mr. Nicol: Oh, a dozen.

Senator Smith: Mr. Chairman, this happens to be a subject on which I am anxious to hear Mr. Nicol.

The Acting Chairman: Senator Smith, we have neglected you and I apologize.

Senator Smith: I think this would be a good time to raise it. When he mentioned logging in the national parks, it was the first information I had that any logging was permitted at all, and I failed to get the point of Senator Molson's questions. Do I understand that this is a common practice or a most uncommon practice, to permit logging of any kind within the boundaries of a national park?

Mr. Nicol: The only place there is logging in a national park at the moment is in Wood Buffalo National Park. This park was not managed by my organization for many years. When we took over management, there were logging operations going on which provided support for the native peoples adjacent to the park in places like Fort Vermilion and Fort Chipewyan. These were under quite controlled conditions. There was no clear cutting. They could not cut anything smaller than 12 inches at the butt. They are being permitted to continue until those limits run out.

In other parks we have spent \$3 million to acquire the rights which had existed prior to the creation of the park and in which cases the owners of those rights were about to start logging operations. It is not a popular activity with substantial portions of the public, as you noticed in the press in recent days concerning a large provincial park.

Senator Smith: If I may continue on that point, because now I am coming to the point that I wanted to raise here today: I know a

gentleman very well who lives in Nova Scotia, in fact, in my home town, who has been the chief forester of the Bowater organization in Nova Scotia for some years. I know the kind of man he is and I admire him very much for his general attitude towards conservation and preservation and so on. He burst into print last Saturday.

Mr. Nicol: Is it Mr. Haliburton?

Senator Smith: No, I do not know Mr. Haliburton. It is Senator Blois who quotes Mr. Haliburton.

Senator Blois: Now, you mind your own half and I will mind mine!

Senator Smith: I would like to put on record just several little paragraphs that state the problem and are to the point. This is a Mr. Ralph S. Johnson who is now retired from the service of Bowater and takes on contracts for forestry advice. This is a rather sensitive essay on this very subject we have been talking about. The headline in the *Halifax Chronicle-Herald* of Saturday, June 2, was "Wilderness park idea 'fundamentally wrong'." I know that this is not a new story to Mr. Nicol and to the Parks Branch, but it is the first time I have heard it from a man whose motives cannot be thought of in any way, shape or form as being related to the desire of those who would think only of their own selfish ends. This is just one of the paragraphs:

In general, overmature forests are most susceptible to attack by the spruce budworm and similar defoliating insects and by the eastern spruce bark beetle, a highly destructive insect in old growth spruce. Overmature forests are most often focal points for the start of insect or disease outbreaks.

He makes the point through this rather extensive article that it is a very bad mistake not to seek out and cut the over-mature forest for the sake of preserving the younger forest so that there can be a continual growth. It is his observation, and he puts it in these words in another paragraph:

One need not be clairvoyant to foresee the destruction of most of the forest of Cape Breton Highlands National Park by 1990. It is largely overmature and ripe for an insect outbreak.

There is just one other quotation which I would like honourable senators to hear, for a better understanding of the point of view on this very important subject. He says later in his article:

Logging does not destroy a forest forever and often for not very long. Practically all of Kejimikujik park has been cut over at least once and parts of it as much as three or four times. Much of it has been burnt over once and parts have been burnt as much as three times since 1850. Some of the areas burnt over are now non-productive, but many have excellent stands of spruce and pine.

I have had conversations with Mr. Johnson on this subject and, not being a forester and not knowing much about it. I have not been able to judge whether he has a wild idea or not; but I rather take it that his views are the direct opposite to those of the persons conducting the policy of the parks.

With those few quotations, Mr. Nicol, would you tell us something about your attitude with regard to whether or not these over-mature forests are focal points for the start of insect or disease outbreaks?

Mr. Nicol: I will ask Mr. Kun, Director of the National Parks Branch, who is also a forester, to comment on your remarks, senator.

Mr. S. Kun, Director, National Parks Branch, Department of Indian and Northern Affairs: Senator Smith, I think you have touched on a debate which has found its place in the Canadian Institute of Forestry for many years. It is a two-sided debate, because with changing times we have changing attitudes towards our forest lands. The prospect of over-mature forests creating problems which they themselves solve by nature but not necessarily to the advantage of man, is something which is recognized by all foresters.

By the same token, we take that into consideration and take into account the fact that today foresters throughout this country, and indeed throughout the world, are becoming very much aware of the consequence of the pure harvest of forest lands without taking into consideration the desire of people to use up their spare leisure time by pursuits in the forest lands.

As we move into the future, we are going to find a mellowing of the attitude of industry. Those of you who were watching television last night saw a major Canadian forest industry company putting its message across in a very people-oriented way.

More and more of this sort of thing is occurring. It is true that you can take isolated examples of over mature forests and you can say that, allowed to proceed along this course, that forest is not going to produce the greatest benefit to this generation. However, depending on which forest land you care to look at, for example in the Canadian Rockies, or if you are looking at forests on rocky land, there could be an argument posed which would say that water is also a very important ingredient of our land. If all you have is exposed hillsides, which have had their organic matter removed in the form of the trees being cut off and transported somewhere else for processing, those hillsides will remain barren lands or periodically will become barren lands over which the water washes and heads out to sea and does not establish itself as a water base or as a water table on the lands, being released gradually throughout the season to the availability of human beings. This applies in the Canadian Rockies particularly.

This same argument, to different degrees, can be presented in the case of Kedge Park, but since our major water supplies for the nation do seem to develop generally in the Canadian Rockies, for example, there is a very strong argument for allowing the trees to grow to maturity, decay, build up an organic or humus layer which traps the water as the snows melt or as the rains come and releases that water in a gradual way to the availability of all industry and agriculture across the western portions of our country.

To take any particular argument without taking the specifics into account, any argument about maturity of forest is rather difficult to respond to; and I believe that I can best say that the Canadian Institute of Forestry itself is realizing the benefits on both sides and it is something which will be debated for many years to come.

Senator Smith: Thank you. That can be very interesting. I have just one more question.

How much of the growth in areas like Kedge Park for example and in Nova Scotia in general can be described as even growth areas? Is there very much in areas of even growth where the forest is going to become mature or even over-mature—in that they are all tall trees and they all fall down—or is the growth ups and downs, uneven growth in other words?

Mr. Kun: You have even growth where you have forest fires; you have uneven growth where there has been a dearth of forest fires; and then there is a mix.

Senator Smith: I understand with regard to the Cape Breton Highlands National Park, because of the unsightliness of it, I suppose, the Parks Branch has authorized the cutting and removal of some of the trees that are rotten, and so on, but that rather large patches of similar growth and similar over-mature growth exist through the park, that are foci of possible infection. What I understand from what the witness has said is that the overall function of the forest outweighs the danger of permitting the foci to exist or even to extend. Is that the situation?

Mr. Nicol: Your comment on Cape Breton Highlands Park is interesting, Senator Smith, as at the moment there is no spruce budworm there. There is, however, evidence of spruce budworm south of the park, in one of the commercial forests. The foresters have reasonably assured themselves that the more mature the forest, the more likely there will be disease. As I said in my previous remarks, if there is disease which will affect substantial areas of the park or endanger commercial forest adjacent to it, we will fight it just as vigorously as anyone else.

Senator Smith: This article indicates that the author agrees with your remarks, that the infection has not reached that park yet, but he does observe that it is largely over-mature and ripe for an insect outbreak.

Senator Cook: Do I understand your remarks to convey that over-mature trees also play their part in the scheme of things?

Mr. Kun: That is correct. I do not wish to belabour you with a lecture on forestry.

Senator Molson: It is very interesting.

Mr. Kun: Let us consider the natural succession of growth following a forest fire which wipes clean an area of land. The growth will depend on the area. The one with which I am most familiar is the Rocky Mountains. We find lodgepole pine, under that spruce and under that Douglas fir. If any one of those populations of trees is removed the succession is stopped and the opportunity for you and others to see what a real mature forest can look like is removed through this intervention imposed by the cutting process. This is just an ecological aside and without man-planting trees we do not see these steps taking place. If we are concerned for the diversity in this life that will probably sustain it and protect us, we must be sure that there will be this diversity in forests to ensure that one single

catastrophe cannot wipe out the whole forest. Those of us who are familiar with it know that the spruce budworm does not work on other species of trees. Therefore it is healthy to have a mix of trees in a general area so that there is not the danger of one species being wiped out by a single catastrophe.

Senator Norrie: Why do the Scott Paper Company, Mersey and Bowaters cut an area clean and leave the mess right there? Anything they cannot use is just left and the area is just like a graveyard.

Mr. Nicol: Senator Norrie, almost any commercial logger will tell you that they must clear-cut in order to have an economic operation. The clean-up varies from province to province depending on the terms of their timber leases or timber berths. In many provinces the controls are very stringent and force the operator to clean and burn all his slash and leave bare ground. They are less stringent in other provinces, where the slash can be left where it was cut. I have seen this in certain provinces and it seems to be more prevalent where the logs are cut by contract. In other words, the company owning the limit subcontracts the cutting and the delivery of the logs.

Senator Norrie: Those companies tell the public that it is the best way to reforest.

Mr. Kun: That can be the case for one species.

Senator Norrie: But we are not considering just one species, are we?

Mr. Kun: We must know the circumstances, because the symptoms and treatment vary in each case.

Senator Norrie: It would not be the same all over Nova Scotia, would it?

Mr. Nicol: Generally, it is spruce forest in Nova Scotia, although there is also a considerable amount of deciduous forest.

Senator Smith: The argument about clear-cutting has been going on for a good many years, and even those who were against it are now pretty well on the side of clear-cutting under certain conditions.

Mr. Nicol: It is interesting that in the Scandinavian countries, Japan and certain areas of Germany, rather than wait for natural regeneration they go in the following season and reforestate by planting the species which will yield the type of wood fibre they need.

The Acting Chairman: Senator Norrie, do you have further questions?

Senator Norrie: I do not think my question has been answered. I will have to go to Nova Scotia and see what trees they do have.

Senator Smith: My own personal feeling at this time towards the policy of the park is related to my earlier experience of going in the

woods. I still believe quite strongly that it is a great lesson in seeing how the whole ecological system works to walk through one of these over-mature parks and see what is dead and dying and also what is growing. If one lived long enough it would be a complete lesson.

The infestation of something foreign such as the spruce budworm, which I understand is not historical in Nova Scotia, brings this to our attention. I heard the term spruce budworm for the first time in connection with a New Brunswick forest. I would like nothing better than to take children with me on some of those trails to see these things. This article indicates that due to the focus of the infection we might lose it all by 1990. I will not be around then, but my grandchildren sure will be. This is a very interesting question and I am very grateful for your comments.

The Acting Chairman: Could I ask Mr. Kun a question which has nothing to do with this?

Senator Molson spoke of forest fires which, of course, occur in remote areas, due to lightning, I suppose. Is there any evidence in our forests of very ancient and tremendous forest fires such as might interest archaeologists, or do we only have information with regard to contemporary fires?

Mr. Nicol: Do you have in mind something such as a petrified forest?

The Acting Chairman: Perhaps not that far back, but ancient forest fires anywhere from 500 to 1,500 years ago.

Mr. Kun: The greatest opportunity to study this, of course, is in the areas of the evergreen forests, which burn so much better than deciduous forests.

The Acting Chairman: "Better", or "worse"?

Mr. Kun: Yes. However, because of this, large areas of fire would exist where there were contiguous stands of evergreen forests generally unbroken by vast areas of water or mountain chains. This situation would prevail also with a reasonable period of summer during which there is sufficient heat to sustain that fire throughout the season. In view of this, we are discussing the Lower Canadian Shield area, the Province of British Columbia and eastern Alberta generally. In my opinion the largest fire areas are in the southern Yukon and Northwest Territories, where the very nature of the forest cover gives evidence that there were fires of major proportions.

The Acting Chairman: Hundreds of years ago?

Mr. Kun: Many, many years ago, that is right.

Senator Molson: Again in connection with fires, when there is substantial burning of slash areas the patches left are really nothing but ash, all the humus and so forth having come out of the ground. Does that hasten erosion? Is this harmful, or is there generally insufficient space damaged in that manner that it does not matter?

Mr. Kun: Again your question is very direct and requires a very detailed answer. However, I will keep it as short as possible. The burning of material on the ground results in ash, which can produce a fertilizer effect for the mineral soil. The removal of the slash from the ground can also encourage certain types of plants to start early, such as lodgepole pine. Let us keep to the pine trees. It will start quickly in a barren, open, hot area, where the sun can get at it and there is no foliage.

Senator Molson: Even if it is ash?

Mr. Kun: Even if it is ash. It can get a very good start. However, all the other consequences of a forest fire must be considered. The first which comes to mind is a heavy rain and the water runs off quickly with resultant scouring and erosion action. What happens next in the chain in such a situation? All that material that is wiped off the slopes ends up in the watercourses, which fill up and the fish spawning beds can be choked with ash, silt and so forth, which will affect the fisheries. When the stream beds fill up they can no longer hold the same volume of water as formerly, which will result in a flood situation and the development of flood plains, with further consequences.

The Acting Chairman: You did not mention the raspberries! I think one of the greatest things after a forest fire is the raspberry crop, especially in central Canada.

Senator Cameron: Approximately 15 years ago the Parks Branch sprayed for the spruce budworm in Banff National Park.

Mr. Nicol: It was not in Banff, but we have spent substantial sums of money in Fundy National Park.

Senator Cameron: No, it was carried on for about two weeks with aircraft spraying at Banff.

Mr. Nicol: I am informed that the spraying was for the lodgepole pine, so it could not have been for the spruce budworm.

Senator Cameron: It is an illustration of the fact that the Parks Branch has spent a sum of money in an attempt to control insect infestation in the park. This was maybe 20 years ago; I knew the pilots and saw them spraying from time to time.

Mr. Nicol: We have sprayed in the parks. We sprayed in Terra Nova National Park in Newfoundland, where we had the balsam woolly aphid. At the moment we are spraying in Fundy, where the spruce budworm has entered the park from outside. We watch forests in other parts of the country. There is new focus on the park warden. He spends more time on the forest technology than in the past.

Senator Cameron: What has been and is now the situation with respect to logging in the Yoho and Kootenay Parks? I do not believe there has been any in Banff or Jasper.

Mr. Nicol: There is done in Yoho, because TB-406 has been ended.

Senator Cameron: Is it complete?

Mr. Nicol: We ended it for a number of reasons. We have not had logging in Kootenay, but we did permit the loggers to use the Pioneer road to transport logs from south of the park area into Radium.

Senator Cameron: Is it the situation that there is no logging in western parks at the present time?

Mr. Nicol: There is no logging in any parks except Wood Buffalo, Senator Cameron.

Senator Desruisseaux: I would like to ask Mr. Nicol, through the acting chairman, what is the present program of the Parks system. Is there an extension program contemplated?

Mr. Nicol: We are meeting this problem in two ways: one, we do not think the national parks system is complete until we have a representative area from each physiographical region in Canada. In the last few years we have added 10 new national parks to the national parks system. So we are adding parks to the system.

In addition, we are examining existing boundaries. Some of the boundaries have in the past been drawn up more from the point of view of the surveyors' ease than from the point of view of the ecological systems contained in it. So we are making minor changes to improve the existing parks from that point of view. In other cases we had park boundary lines cutting through the middle of a lake. That does not make sense, and we are sitting down with the province concerned to either include or exclude the entire lake.

The Acting Chairman: It is easier to run a straight line.

Mr. Nicol: The straighter it is, the faster and easier it is to describe it. We are doing two things: we are expanding the system, and we are looking at existing parks to see if the boundaries are doing what they are supposed to do.

Senator Desruisseaux: In this area, how do we compare, on a per capita basis, with other nations?

Mr. Nicol: I would think that on a per capita basis, taking into consideration both our systems and the provincial systems, we have more area in parks.

The Acting Chairman: Per capita, than any other country in the world?

Mr. Nicol: Yes.

The Acting Chairman: While we are mentioning provincial systems, perhaps it is appropriate for me to say at this time that I have available some sheets containing the names of national parks, their areas and the percentage of the provincial area for every province and territory. I think this is one of the things that Senator Norrie wanted.

The names of provincial parks are not available, but for every province and territory the area in square miles of provincial parks is

shown, the percentage of the provincial area is indicated, and there is a comparison, on this table, between the area devoted to national parks and that devoted to provincial parks.

The names of the provincial parks are not given. I understand that it might be possible to produce those names in another list. Is it the committee's wish that we have those names?

Mr. Nicol: It is a formidable list.

Senator Molson: It is the areas that we are primarily interested in.

The Acting Chairman: Perhaps this material will be satisfactory, in the circumstances. Is it appropriate that we have this printed as an appendix to today's proceedings?

Hon. Senators: Agreed.

(For list of names, see Appendix p. 24)

Senator Molson: The provincial list does not give the number of provincial parks in addition to the area?

The Acting Chairman: No, just the area, and the comparison with the area of federal parks in the province.

The Alpine Club, particularly Dr. McDiarmid, was interested in the first question that Mr. Nicol dealt with. He did not finish it, and he still has a second one to deal with. Perhaps Dr. McDiarmid would like to comment after Mr. Nicol completes his point. In the meantime, I will ask Senator Norrie to ask her question.

Senator Norrie: There is one point that I should like to have clarified. There is great confusion in our area, and I imagine in other areas. I am a Bluenose; I come from Nova Scotia. I should like to know what bearing the National Parks Act has on provincial acts, and who is the boss of whom. The people in Nova Scotia are getting the runaround. I want to know who is at fault and why we do not know what is going on. Am I wasting words talking to you people, and should I be down there fighting this in my own area? The people in Nova Scotia do not know what is going on, and the people most concerned are the ones who are kept in the dark. We are doing all we can to assist.

For instance, I have here a clipping which reads:

Contrary to what leaders of a park protest movement in the Eastern Shore had charged, he said his government . . .

This is Premier Regan.

. . . had been sensitive to the feeling of the people in the area and had placed a freeze on further planning last fall.

Well, if he put a freeze on, he must have been in the deep freeze himself, because nobody else knew there was a freeze. I was wondering what that means, and why we cannot be told. They are not fools down there. They like to know.

There is speculation going on. The human element is what I am fighting for. I think we can preserve the park area, the natural

growth and natural beauty in that area, and keep the people in their homes. That means the cottages too. Every item that you see in the papers say, "We will let the permanent home dwellers live out their lives, but we will move the cottagers right off the map." That is not good enough. Would you comment on that? Who is the boss?

Mr. Nicol: It would be improper for me, as an official, to comment on a statement of the premier of the province. I am sure you are aware of that.

Senator Norrie: I know that; but where do we fight—here or there? Am I wasting words here? I will shut up right now if I am.

Mr. Nicol: I would hope that there could be a meeting of minds as to the establishment of a park on the Eastern Shore. Specifically that area is not included in this bill because there is not a meeting of minds. We had hoped last autumn, when the committee was set up to hear the views of the people in the area, that there could be a dialogue. Unfortunately, the meetings became so acrimonious that they produced a great deal of heat but very little light. My department's view is that there is a middle ground here which can be reached and which, I think, will satisfy the majority of the people. You will recognize, of course, that you cannot satisfy everybody.

Senator Norrie: I am not suggesting that. In this area a provincial-federal committee was set up to review these briefs. However, that committee never came to light, perhaps because they got scared and folded up. I do not think they had anything to be afraid of. I was at one of the meetings and I came out with a whole skin.

The Eastern Shore Association, which is an upstanding representation of the people who are being affected—there is nothing shady or foul about it applied for a LIP grant in order to conduct an economic survey of the area, and they were turned down. In addition to that, there has been no report or survey made, to my knowledge, in that respect. Why has one not been done; and if one has been done, why have we not known about it?

Mr. Nicol: At the last meeting of the committee, senator, I indicated that we have done in-depth economic surveys in three other Atlantic areas and we applied the findings in those areas to the area of the Eastern shore. There is a mathematical model which we have developed to assess the economic impact, and in each case we applied it to the circumstances in that particular area. The same approach was used by the province of Prince Edward Island in assessing the East Point area. While we did not do a direct economic impact study on the Eastern shore area, we did apply our experience in the other areas to the conditions that exist on the Eastern shore, and we have satisfied ourselves that there was a positive economic impact.

Senator Norrie: To what extent has there been an economic impact?

Mr. Nicol: I cannot tell you that offhand, senator, but I can obtain that information for you and forward it on.

Senator Smith: I think all members of the committee would like to have that information.

Mr. Nicol: Fine.

Senator Norrie: I do not believe Prince Edward Island has the same problem with fog as exists on the Eastern shore. If it is anything like the fog in Ottawa, it is 100 times worse down on the Eastern shore. Visitors going through that area will be astounded, Prince Edward Island does not have that problem to the same extent.

Senator Cameron: Mr. Chairman, obviously we are not going to get at a lot of these things today. Senator Norrie is not alone in her concern as to what happens to the people of these areas. I should like to indicate some of the things which come to my mind which I feel we should discuss at the next meeting. There are five areas, and they are, firstly, the situation with respect to the moving of the railway divisional point from the Jasper townsite and what happens to the people in that area as a result; secondly, the land rentals—and this is a complicated topic which requires a good deal of explanation; thirdly, an explanation as to why there are 40 different kinds of leases in the parks; fourthly, the communications between the parks administrators and the residents, and the role of the advisory councils; fifthly, the location of new housing and the effect thereof on the ecology—who decides where new housing will go, whether it be in an unsuitable area because of high water table, or whatever; and, finally, the question of mobile homes, which is a very controversial issue. Those matters would comprise the agenda for a whole meeting.

The Acting Chairman: It was suggested last week that we restrict ourselves more carefully to the terms of the bill itself. I did not agree with that, but I am in the hands of the committee. The committee decides how far it wants to go into these matters. Is it the intention to have a further-ranging inquiry because the act has been opened, rather than what the specific terms of the bill suggest? I think I should get some guidance from the committee on that point.

Senator Norrie has some detailed questions, as did Senator Carter last week, and I know Senator Laing has some questions with respect to some of the northern areas. Senator Cameron has also talked about certain areas with respect to the parks in Alberta.

What is the feeling of the committee on this? Should we widen the scope of our inquiry?

Senator Smith: Mr. Chairman, my own view is that a bill such as this is not an ordinary amending bill. In the first place, there are four or five schedules attached to it which propose officially to set aside definite areas of land for the purposes of national parks. When we are discussing the expansion of the parks system, I feel we should have some opportunity to get the history of what has already been done by the Parks Branch and why it has been done, and how they treated or, as Senator Norrie might say, how they mistreated the people of the area. I feel this discussion should be wide open.

I think this bill has been initiated in the Senate because of the lack of parliamentary time to go into it in detail. I think all these areas can be gone into by this committee, whereas there would not be the time to do so on the other side, and I believe that is our function. I think it should be as wide open as we want to make it.

The Acting Chairman: Is that the feeling of the committee?

Senator Norrie: Mr. Chairman, I have been discussing problems as they relate to the province of Nova Scotia because I am more familiar with it, but I think the same applies throughout Canada.

Senator Flynn: I think the questions raised by Senators Smith, Norrie, Cameron and others relate to the amendment which I suggested last week. I do not know whether Mr. Nicol has had an opportunity to discuss that amendment with the minister or not.

My proposed amendment would amend clause 3 of the bill to provide an opportunity for interested parties or persons affected by the additions to express their views at a public hearing, of which due notice would be given. In other words, what I am introducing into the bill is the principle that the department should not make a decision to create or to enlarge a park without giving an opportunity to those interested to make their views known. That amendment, I think, is tied to these questions.

The Acting Chairman: I take it, Senator Flynn, that you would support what Senator Smith has said? Is it the wish of the committee to broaden the scope of our inquiry?

Senator Norrie: There is another point I should like to bring up, Mr. Chairman, if I may. The British system of creating national parks has been referred to. The residents are not disrupted; they remain in their homes and the park is built around them. Could we not study the British act and, perhaps, learn something from it?

The Acting Chairman: If we are going to have a wider discussion than perhaps was contemplated last week, I think that point might very well be raised.

Honourable senators, perhaps I might suggest that Mr. Nicol finish the presentation which he started at the beginning of the hearing.

We are meeting this afternoon on another matter. I am wondering whether or not it would be convenient for the committee to meet, say, tomorrow morning at 9.30 or 10 o'clock, at which time we could go into these other matters. Time is getting on. We are now in June, and we are going to have a good deal more to do in this committee. I think we would be well advised to get this particular matter out of the way by more frequent sittings.

Would tomorrow morning be a good time to hold another meeting on these matters?

Senator Laing: Mr. Chairman, I probably made the first remarks that initiated the idea that we should broaden the discussions of the committee, because I was concerned over the discussion that took place in our house. I do not think that up to that time the discussion in committee related much to the discussion that took place in the house. There were a number of expressions of concern and dissatisfaction.

If we are going to overcome that, I believe we would have to be prepared for five or six immediate sittings of this committee. It is going to open up a great number of things.

I think it would be of benefit to the Parks Branch if we did that. I think the parks are terribly misunderstood in Canada. They are one of the greatest assets Canada has. How many of us here know how much the parks bring in? We could not run a tourist attraction in Canada today if we did not have the national parks system. Every bit of the tourist bureau's work is just centered on bringing people to national parks. We use all our photos and all the effects that we have on the parks. We have television programs running in the United States on the advantages of our national parks. How many of us know what the parks actually return to the Receiver General? It must be a considerable amount of money; it must cover a fair proportion of the cost of the parks annually. That has never been displayed to anybody.

On the administration of the parks, several years ago we decided to decentralize, to get away from the kind of complaints that Senator Norrie has mentioned. We established offices in Calgary, Cornwall and Halifax. How are these operating? There is criticism that inflexible decisions are being made here and visited down on the parks, and this sort of thing. You cannot operate a park and have within it people living with all the rights of ordinary citizens living outside the park. You cannot have both of these things.

Senator Norrie: I think you can!

Senator Laing: Then it would be a provincial park, not a national park. You cannot operate a national park on that basis, not and give all the rights to the people. There was a proposal at one time that we would alienate Banff and set it up under the province as a town settlement. You cannot do these things. You cannot operate a park on the basis of having all of the enticements that you have in the city. If you do that, the people, including the young people today, will not go to the national parks. They go there now because they want something that is in total contrast to where they are living: they want quiet; they want control; they want distance. If you are going to open this debate up, it would be a very good subject, but if it is going to be done we had better be prepared to have four or five sittings and do it properly. I think it would be advantageous to the parks system because I really believe it is one of the greatest assets that Canada has.

The Acting Chairman: Honourable senators, it seems to me that what Senator Laing says makes very good sense. If the committee is so disposed, it might be helpful if those who have the great interest that he and others display, would indicate before the next sitting to Mr. Nicol and his officials the line of questioning they would like to embark on. That would save time. We will be able to have a concentrated effort in certain areas and do a great service to the Parks Branch and to the use of the parks for the tourist industry. Is the committee of that opinion?

Some hon. Senators: Yes.

Senator Molson: Mr. Chairman, if we are going to do a study of the national parks, the first thing we have to ask ourselves is: Is this the right committee? I am not opposed to it—do not misunderstand me at all; I think the idea of going into this subject could be very useful.

I want to ask one question, Mr. Nicol, in this connection. Is there anything connected with this bill with regard to the operation of a national park where a further delay will have any unfortunate effect?

Senator Norrie: I think that things are going to happen in Nova Scotia, according to what is in the paper. It is either going to be a national or a provincial park this summer. We feel it is very vital.

Mr. Nicol: To answer your question, Senator Molson, there are some points. As the committee may know, the bill has not been into Parliament since 1958, though it came on briefly once. It is important that we have the protection of the National Parks Act on these new areas at the earliest possible date. There are certain annoying things I mentioned initially, such as the payment of parking fines without having to go before a justice of the peace. These are constant irritants both to the RCMP and to our administration.

Without wishing to suggest the debate be limited at all, I would hope that the bill could be expedited at reasonable speed.

The Acting Chairman: There is nothing in the world to prevent our continuing our sittings after we have finished consideration of the bill; we could do that by agreement amongst ourselves.

On Senator Molson's point as to whether this is the proper committee, if the bill has been referred to the committee I think the committee has within its own power the right to inquire, to the extent that it feels it needs to do so, in respect to the legislation that is before us, and that includes the mother act as well as the amendments; but we may not be the best forum.

Senator Cook: Mr. Chairman, I think there is some merit in our considering the bill and disposing of it; and then, because it is very obvious from the comments of informed senators that it is going to be a very long business to go into the detailed administration of the National Parks Act, we could do the same thing as we did with the Export Credit Corporation and have a special committee set up. We could dispose of the bill and then there could be a general far-reaching inquiry by those who are particularly interested and knowledgeable, some of whom may not be members of this committee.

The Acting Chairman: That would be a more expeditious way to handle the matter, provided it is understood that there will be a reference back, perhaps to a special committee to be appointed. Would you like me to take that up with the powers that be on both sides of the house to see if that can be done? We are not going to finish consideration of the bill this morning, in any event.

Senator Flynn: I think we should hear the people Senator Laing spoke about next week.

The Acting Chairman: What is your disposition with reference to the balance of the material that Mr. Nicol has here? Shall we hear that now?

Hon. Senators: Agreed.

Mr. Nicol: The other proposal, by the Alpine Club, which was submitted by brief to the committee at the last sitting, concerned the national park in Baffin Island. Specifically, there are three particular areas which were referred to—Cape Searle, which is known to be a major fulmar colony. It was identified as early as the sixteenth century in voyages into the northwest passage, as a navigational marker; and to our knowledge there are no resource conflicts. It was not studied in the detail that the area in the park was studied and therefore, at the time the announcement was made and the discussions took place with the Northwest Territories Council, we were not in a position to identify it. It is likely that we will so do.

Senator Molson: "So do"—include it?

Mr. Nicol: I think so, senator.

Senator Molson: Thank you.

Mr. Nicol: The east side of the head of Pangnirtung Fiord was identified as being ecologically interesting. However, it is an area which has been indicated to us as having a potential mineral development and there are a number of the features of that particular area included in the park area. So we did not include that area. The third area is the June and Naskakjina Valleys. We have carried out some studies there. A considerable biological interest has been identified by the Alpine Club. However, the mineralization of the area surrounding the valleys poses a question which we cannot answer at this point in time. We feel that the area identified for the park in Baffin Island is a very significant park as it stands at the moment. If at some future date these other areas prove to be of no commercial interest, we might consider them at that time, but we do not think that it would be logical to include them in the boundary at this time.

The Acting Chairman: For those reasons?

Mr. Nicol: For those reasons, Mr. Chairman.

The Chairman: Are there questions with respect to this part of Mr. Nicol's evidence?

Mr. McDiarmid of the Alpine Club of Canada, who raised the points dealt with by Mr. Nicol, is present. Does the committee wish to hear Mr. McDiarmid now, or would you prefer to leave that until another meeting?

Mr. McDiarmid, have you any comments in reply to Mr. Nicol?

Dr. D. R. McDiarmid, Member, Alpine Club of Canada: First of all, Mr. Chairman, I have several remarks concerning the Ragged Range proposal.

The Acting Chairman: Where is this?

Dr. McDiarmid: This is the proposed extension to the Nahanni Park in the Northwest Territories.

It was basically our feeling in response to Mr. Nicol's comments concerning the main thrust of the park being river, that the mountainous area, which is quite a spectacular mountain area not only from the point of view of the peaks and the granite giving rise to them, but also certain of the Alpine surroundings, is basically complementary to Nahanni Park rather than competing with it.

Our feeling basically concerning the comments with respect to other forms of protection is that all forms of protection are somewhat hypothetical unless we are sitting down to do something about them. In other words, we could say there are other means of protecting this region to a greater or lesser extent by other vehicles.

The Acting Chairman: Such as the game sanctuary?

Dr. McDiarmid: Yes, or something of that nature. Unless proposals are put forth, of course, we could go on for years and absolutely nothing would happen. That is basically our comment. We feel that the area complements the proposed Nahanni Park.

The Acting Chairman: Do you mind if I stop you there and ask this question? You have drawn this to the attention of the committee in addition to the officials of the Parks Branch. Undoubtedly they will take your remarks into consideration. It may not be essential that this be done at this time, but it is always open, I gather, to the Parks Branch to introduce this type of conservation or others of perhaps a lesser universal character. Would it be satisfactory to you if the branch gave you an assurance that it would consider your proposals in respect of that particular park?

Dr. McDiarmid: I believe so.

The Acting Chairman: Mr. Nicol, have you anything to say in that regard?

Mr. Nicol: I have two points, Mr. Chairman. We received the brief in February, 1972. We have considered it and certainly have great respect for the Alpine Club in connection with the things they are doing. For the reasons stated this morning we have not accepted these areas into the park. If some lesser degree of protection than the National Parks Act were applied, then I would be quite prepared to draw this to the attention of those federal departments involved.

Senator Cook: But, in any event, you will keep it constantly under review and if circumstances should emerge in the future which would make it then desirable, amendments would be introduced at that time?

Mr. Nicol: That is correct. It is a very difficult task to draw a precise boundary. However, a national park must have a finite

boundary. We recognize that occasionally we do not include complete eco-systems and adjacent areas should be considered. On the other hand, I do not think that the National Parks system can be considered to be the vehicle to protect all interests in Canada. We try to minimize our impact on industrial potential without coming to cross-purposes with others.

The Acting Chairman: I think you will find a ready response from this committee to such an approach.

Senator Cook: Would it be fair to say that the larger the park the more costly generally it is to supervise and maintain it?

Mr. Nicol: This is generally true. Another factor, of course, is the amount of visitation taking place and the need for the eco-systems and landscaping to be supervised in so far as protection is concerned.

The Acting Chairman: Dr. McDiarmid, does that comment satisfy your point?

Dr. McDiarmid: I think we are somewhat at odds as to the value of this particular area. However, the department has given hope and we really cannot ask for more at this time.

The Acting Chairman: You have more than that; it is an undertaking from Mr. Nicol that other forms of protection might be applied to the area.

Dr. McDiarmid: That is right.

The Acting Chairman: At least you have made that much progress.

Dr. McDiarmid: That is right.

The Acting Chairman: With the possibility always that the future may dictate the inclusion of this area, I take it, Mr. Nicol?

Mr. Nicol: Yes.

Senator Laing: What is the population of Baffin Island?

The Acting Chairman: We are now in another area, but ask the question.

Mr. Nicol: I am afraid I do not have that information, senator.

Senator Laing: How many live in Frobisher Bay?

Mr. Nicol: I think the majority.

Senator Laing: In these areas we are concerned that residents of southern Canada will wish to go in and have a look at these parks. It will be some time before the numbers are substantial. Has any consideration been given to the question of access to this park? Has any thought been given to establishing the park as adjacent as possible to the present runways? There is a great runway at Frobisher. There is nothing there but rock; I know that. I wonder

about Bylot Island, where there will be unquestionably a very great development within ten years and which is very close to that. There is now a runway there capable of taking aircraft.

The Acting Chairman: What is the name of the island?

Senator Laing: Bylot. Was any attention paid to Bylot?

Mr. Nicol: Not really. We were looking for a certain type of park when we identified this area, including the largest permanent ice cap in Canada and, I believe, the second largest in the world. It has deep fiords on the North coast, and a very interesting Arctic Sea system.

Regarding your comment about visitors, we had 200 visitors in that area last summer, with no provision for looking after them. There is a motel operating in Pangnirtung. I believe there are plans to double the size of it this year. This is outside the Southern boundary of the park. We have been informed of two groups of Europeans who are to visit the area this summer.

In the case of the Nahanni River, we had 1,500 people go down that river last year. So they are coming already.

Senator Laing: But much of the supply will be by aircraft. There will be a load picked up every seven days. This is where the people in Southern Canada will learn something about the North. Would it not be advantageous to put these close to airports, where there are decent runways?

At Mary River there is an extensive runway right now. There will be a big development there. What would it cost for a person from here to go there and back?

Mr. Nicol: There is an unscheduled service by Nordair from Frobisher to Pangnirtung.

Senator Laing: Is there a runway there?

Mr. Nicol: I believe they are using float planes.

Senator Laing: Am I wrong in saying that the return cost would be in the region of \$500?

Mr. Nicol: I do know that living expenses are high.

The Acting Chairman: Shall we now continue with Dr. McDiarmid?

Dr. McDiarmid: People are interested in that area. I think we will see a greater number of visitors in those areas. Regarding Mr. Nicol's remarks on our suggestion for additions to Baffin Island Park, I might mention that they would add approximately 3 per cent to the proposed area of the park.

We are happy to hear that Cape Searle will be included, and we feel that it should be included.

With regard to June and Naskakjna Valleys, which Mr. Nicol said is ecologically interesting, he mentioned mineral deposits there. My information would suggest that the area in which there are rocks which might contain minerals is more to the southeast.

There is a pass, the Kingnay Pass, which runs parallel to the Pangnirtung Pass. That is to the southeast of our suggested boundary extensions.

It is my understanding, from talking to people in the Geological Survey, that it is in this area, which runs from Kingnay Pass to the southeast, that there are rocks which do contain minerals.

In the Pangnirtung Pass the vegetation is relatively new, whereas in the June and Naskakjna Valleys there are rocks of an earlier period. It makes an interesting contrast. The feeling is that this would be a useful addition to the park and would amount to something less than 3 per cent as an addition to the overall proposed park area.

The Acting Chairman: Is it fair to say that there could be varying opinions as to where the minerals do or might occur? I take it you have one view and the department has another on the extent of minerals in these areas outside of the proposed park.

Dr. McDiarmid: Knowledge of the geology of the area, as I understand it, is based on a reconnaissance-type survey where you more or less make a grid. You drop in and study the geological areas on the grid. It has not been heavily studied.

The Acting Chairman: It has not been heavily studied?

Dr. McDiarmid: Our information is that they have not found minerals in that area to the southeast of the Kingnay Pass. There are rocks which in other places sometimes contain minerals.

The Acting Chairman: It seems to me that it is desirable to leave your point until you are sure. If no mining development is possible, perhaps it could be added. But until the possibility of development has been ruled out, would it not be prudent on the part of the department and the committee to say, "All right, let us wait until we know."

Dr. McDiarmid: These rocks were not found inside the area which we have suggested for an extension.

Senator Cook: Is it not fair to say that these decisions are made following a consensus from all departments involved? It is not the opinion of only one department of the federal government?

Mr. Nicol: Decisions are made on the basis of the best information obtainable from our advisers. In this case we have an associated program, the Northern Economic Development Program, in our own department. They, in consultation with the Department of Energy, Mines and Resources, and more particularly the Geological Survey, advise us and the minister.

We do not always agree with them. Differences of opinion come to my minister for adjudication. The best information we had was that there was a "possibility" in this general area, and on that basis it was decided not to include it at this point in time.

I think what Dr. McDiarmid says is quite correct. The area has not been studied in detail, but if you put it into the national park area now, you put it into perpetuity.

We in the department felt—and this is the decision of the minister—that at this point in time we should not include it. That was the basis of our decision. We do not disagree with certain of the values that the Alpine Club has identified.

The Acting Chairman: Dr. McDiarmid, is there anything further that you wish to add?

Dr. McDiarmid: Our information would be different from that of Mr. Nicol. As far as we can make out, from talking to people, there is no indication of minerals in this area; but Mr. Nicol has received advice that there might be.

The Acting Chairman: I think you will agree that the committee has to try to weigh the evidence before it, and strike some kind of prudent balance.

Senator Flynn: I do not think the committee would be competent to make a decision on that. With all due respect to the views expressed by Dr. McDiarmid, this is not the place to make these representations. It is for that reason that I think there should be a procedure in the act itself to provide for such representations to the department before a decision is taken.

The Acting Chairman: I quite agree.

Senator Cook: They have already been made, have they not?

The Acting Chairman: The point I think we should consider at the moment is whether or not we pass this bill.

Senator Flynn: We are not in a position to change the boundaries.

Senator Cook: I agree with Senator Flynn. These representations have been made. The best advice at this point in time is to exclude it.

The Acting Chairman: I take it that Mr. Nicol is going to confer with his minister with respect to an amendment along the lines which Senator Flynn suggested.

Have you had an opportunity to do so yet, Mr. Nicol?

Mr. Nicol: Do you wish me to comment on that particular point at this time?

The Acting Chairman: If you can. I realize it is a question of policy.

Mr. Nicol: I think two things got mixed up here, one being the creation of new parks. No new park will be created by proclamation of the Governor in Council until after the bill has been studied in both Houses of Parliament. This committee has already heard witnesses and intends to hear further witnesses, and it is quite conceivable that similar representations may be made before the committee of the other place. So there is a forum which can and is being used to hear conflicting views with respect to new parks. It is only after the amendment to the act becomes law that a proclamation will take place.

The other point which you discussed the other day, Senator Flynn, concerned the additions to existing parks. That is quite a different matter. As I have mentioned at several points in the committee's deliberations, we are making minor amendments from time to time to the boundaries. Some of these amendments result from surveying errors; some, as I mentioned earlier, as a result of the lake. All of these are quite minor in nature. Certainly, it seems that the time of Parliament should not be used in debating what, in effect, are very minor alterations to boundaries.

The clause specifically refers to public lands, so that the lands, in the first place, have to be in the title of either the provincial or the federal government. In other words, these lands which might be added, minor areas by order in council, have already been acquired by either one of the governments. In today's climate of inquiry and investigation as to what is going on, I think it would be highly unlikely that anyone would try to use this clause to create large additions, although it could be done. Certainly, if you look at the discussions which have taken place in the various hearings held throughout Canada, you realize the public is concerned. We have held nine public hearings on the provisional master plan of existing parks, and the public is not backward in coming forward to tell us what is going wrong. To add an additional ingredient, which I really do not think will change the situation, is something which my department feels is unnecessary.

What is the constituency to which we are addressing ourselves? The national system is owned by all the people in Canada, so that such a system of public hearings, inevitably, could be a very vast undertaking involving sittings in various parts of Canada. I really do not think, in today's climate, that the situation which you have identified as potential, in the light of the way conditions are in Canada, could really take place. I am certain that the department would not contemplate for a moment any very substantial addition to a national park without amending the act. You are in a much better position than I to assess the political ramifications of such an action which the public felt was done in secrecy.

The Acting Chairman: Were these hearings held under some specific provision of the act, and what is the forum? Senator Flynn has suggested that there is not an adequate opportunity for making such representations. I think that is the import of his proposed amendment.

What section of the act are these hearings to create new parks held under and who holds the hearings? Who is the adjudicator? Is evidence taken and are the people notified, and to what extent are they notified?

Mr. Nicol: We hold a public hearing on the provisional master plan. This is a plan which we developed for each park area setting out the way the park is going to be zoned. We have a five class zoning system which runs from pure wilderness to a pretty intensive use, such as townsites. This plan shows where the trails are going to be, where camping grounds are going to be, where such roads as we intend to put in are going to be, where marinas will be located, what use will be made of the waterways, and so forth. This is all put together in a brochure, and these brochures are automatically sent to all organizations which we believe will be directly affected.

The Acting Chairman: Organizations in the province, in the area?

Mr. Nicol: In the area and in the province as well as national organizations. Dr. McDiarmid's organization, for example, would automatically receive a copy of each brochure, as would the Canadian Nature Federation. On the other hand, there are people with business concerns, and they, too, would be notified. We also advertise in the province in which the park is situated announcing that the hearing will take place. In that advertisement we advise where these brochures or kits can be obtained and we advise as to the date and place of the hearing.

With respect to a small park we hold at least one sitting and it is held in the nearest urban centre. In the case of larger parks, or parks where we know there is vast interest, such as was the case with respect to Prince Albert National Park last year where the sittings were held in Regina and in the town of Prince Albert. These hearings are chaired either by the senior assistant deputy minister or myself, and we have tended to alternate over the period of time. As a panel we have the director of the region concerned, a representative from the Canadian Wildlife Services and a member of our planning staff who explains, through slides and other visuals, the main points of the park plan.

A verbatim record of the proceedings is taken and transcribed and we then form a task force to go over every point raised by individuals at the hearing, examine it in the light of park policies that you know are starting to emerge, impact; and this then is produced in what is called a position paper. The whole theory behind this is that we do not regard ourselves as being infallible in these things and the public hearing process has been good for us. We have made substantial changes in some of the provisional master plans as a result of public presentations.

Senator Flynn: We could alter this. This has only been a practice, it is not a legal requirement of the act.

The Acting Chairman: You do not operate under a section of the act?

Mr. Nicol: No, sir.

Senator Flynn: Why do you object to this principle being embodied in the act?

Mr. Nicol: There are two reasons, Senator Flynn. One is that the areas that we see being involved are not particularly significant.

Senator Flynn: I would not want to be bound by the amendment at that particular place. I want to have the public hearing inserted in the act, if not as a paragraph in section 3, then to amend the act somewhere else as a principle. As I told you the other day, if acting under clause 2, that is, section 3.1, you add only an insignificant parcel of land, the public hearing will be advertised but nobody will come. So there is no problem. If it is significant, then you will hear people. I think the principle is good also for the creation of a park, because you just said that you do it as a matter of practice. Why don't you have it as a provision of the act?

Mr. Nicol: For the areas involved, I do not think such a very time consuming and expensive process is going to achieve the particular end. In the new parks you have a committee in both houses to consider the submissions.

Senator Flynn: I don't think it is a very good forum, a committee of the Senate or of the House of Commons, when you are dealing with the determination of the boundaries. This is so technical and involves so many aspects and so many problems that personally I do not think we would be able to make any change in the description of the parks in the schedule to this bill. Again, I do not suggest that the amendment be the one that I suggest and be at the place I suggest, but I say: Put the principle of the provision somewhere in the act.

The Acting Chairman: I wonder if there is another aspect to it, Senator Flynn, that I might direct your attention to. It occurs to me that where you have the assistant deputy minister or the director of the branch sitting to hear evidence with reference to a proposal that has emanated from the department, from the branch, you almost have those officials sitting in judgment on their own previous decision. I thought that you were talking more about the establishment of an independent body to hear evidence from the department as well as to hear representations from others, and weigh the evidence and decide.

Senator Flynn: It would possibly be up to the minister to designate the persons who would sit on that board and who might be officials of the department, but who had not necessarily anything directly to do with the determination of the boundaries and the assessment of the problems involved.

Senator Cook: At these hearings, do you get very many people who just come for the sake of notoriety and are irrelevant, or are they all concerned?

Mr. Nicol: We have had up to 3,000 submissions at these hearings. I think the minimum response is 300 submissions. They come from a wide variety of backgrounds. It is interesting that obviously we get extremes as well as reasonable people, that the people with extreme views on both sides, either total preservation or total development, have to sit and listen to the submissions of other people.

Senator Cook: The lines upon which I was thinking were, how would you establish an interest, if you had to have certain inquiries for everything you did? As Mr. Nicol says, you could have 300 people coming before you and giving evidence. Perhaps I could go and give evidence on the park in the Yukon, although I live in Newfoundland; I know nothing about it, but I am a self-proclaimed authority and off I go.

Mr. Nicol: To take an example, if we want to add a five-acre parcel and by statute we are required to hold a public hearing on it, I am certain that there would be various groups that would come to that public hearing. I do not agree that nobody would turn up. We would end up with a debate on the total park. This would not be the purpose of adding five acres. Let us say by statute that you were

required to hold a public hearing and you are quite cynical about it; you hold your public hearing, listen to people, and then you to ahead and do what you wanted to do in the first place.

Senator Flynn: This is done occasionally, but it all depends on the temperament of the persons who sit on the hearing.

Mr. Nicol: It is interesting that this is one of the themes that have come through the public hearings on the master plans. Here I think there is a need, because this is going to affect the development of these parks for a long time in the future, that we do have the view of the public. One of the recommendations that keeps recurring is for a parks advisory board. The tenor of the discussion seems to be that there should be someone watching the Public Service to make sure they do not get out of line. But surely this is the function of the minister.

Senator Flynn: In any event I would be satisfied to know that the minister knows about the suggestions that I have made.

Mr. Nicol: I can assure you that this is the case.

Senator Flynn: And that he does not see any benefit in amending the act, not necessarily in the way I had indicated, but according to the principle.

The Acting Chairman: Senator Flynn, perhaps we are pushing Mr. Nicol close to a question of policy.

Senator Flynn: That is it.

The Acting Chairman: I wonder whether it might be desirable, whether the committee would think that we might ask the minister to come and comment on this. We cannot be unfair to Mr. Nicol and his officials, and I know you do not want to do that; but if this is serious enough, to the point of going that far with it, I think we could ask the minister to come, and if the committee so directs I will take steps to do that. Is that the desire of the committee?

Senator Molson: I think so; I think we should, Mr. Chairman.

Senator Flynn: I would like the minister to tell me whether he thinks it is a desirable idea.

Mr. Nicol: I must assure you that the minister was aware of this and that the matter was discussed with him.

Senator Molson: If following Senator Flynn's suggestion of an amendment, there is no ground for publication here, a publication notice?

Mr. Nicol: Of what, senator?

The Acting Chairman: Of these changes.

Senator Molson: Yes, of these changes?

Mr. Nicol: No, but your bill is a public document.

Senator Molson: Oh, I know that. For example, in railways and pipelines and a lot of other situations like this where property or the environment, is being affected, there is a requirement for publication.

Mr. Nicol: The boundaries as embodied in this document have already been released to the public and the press at the time the announcement was made.

Senator Molson: But there is no requirement?

Mr. Nicol: There is no requirement.

Senator Cook: It has been agreed with the provincial authorities?

Mr. Nicol: It has been agreed with the provincial authorities, prior to that.

Senator Molson: I wonder if Senator Flynn's point would be in any way satisfied by that?

Senator Cook: No, it is not done behind closed doors, that is my point.

Senator Molson: I am wondering if Senator Flynn's desire, that everybody be given a chance to be familiar with what is proposed and if they want to make representations to do so, would perhaps be satisfied if there were a requirement in the act that publication be given to this.

Senator Flynn: Prior publication, before action was taken.

Senator Molson: Publication prior to action being taken. That would be a very simple thing for the department.

The Acting Chairman: I suppose, Senator Molson, we should say that the establishments under discussion now are Crown-owned lands only, not privately-owned.

Senator Molson: I know, Mr. Chairman.

Senator Flynn: Is there no expropriation involved?

The Acting Chairman: There is no expropriation involved in this case because the Crown owns the land.

Senator Flynn: Expropriation has taken place previously, in other cases. That is the point.

Mr. Nicol: It is a matter of practice, Senator Molson, to announce these after agreement has been reached. Certainly it was this very announcement which I believe alerted organizations such as that of Dr. McDiarmid to the location of the boundaries and why the lands are set aside.

Senator Cook: I suppose the provincial member would like to know also.

Senator Molson: Senator Flynn suggested an amendment. I will ask if this other procedure would satisfy him and perhaps not be too complicated?

Senator Flynn: It would be better than nothing.

Dr. McDiarmid: Mr. Nicol, I am not 100 per cent clear. Why has the department not suggested amendments in the case of Searle Park?

Mr. Nicol: Our studies being advanced, but not complete is really the reason for not suggesting an amendment at this time. I gave an opinion that I believe that studies would bear out your remarks as to its outstanding quality.

The Chairman: Let us return to the point discussed by Senator Flynn and Senator Molson. Is it the committee's view that we should ask Mr. Nicol and his officials to consider two points? First of all, although I think perhaps Mr. Nicol has dealt with this, is the wisdom of establishing an independent tribunal to review proposals to establish new parks.

Senator Flynn: Or to enlarge parks.

The Acting Chairman: Or to enlarge an existing park. Secondly, as an alternative to that, might a change be made in the bill to require the publication of information with reference either to the establishment or enlargement of a park and to inform us whether that type of amendment to this bill could be made and whether it would have the desired effect?

Is that the message which the committee wishes to convey to Mr. Nicol?

Senator Flynn: Yes, and to the minister.

Senator Molson: Yes.

The Acting Chairman: We can ask the minister to discuss it when he appears here. Are there further questions with respect to this morning's discussion?

Honourable senators, I have a telegram, and am glad that Senator Laing is present. It is addressed to the chairman of the committee and reads as follows:

Te Kapy President Whitehorse Chamber of Commerce and M P Phillips President of the Yukon Chamber of Mines would be pleased to make representations to the Senate Committee regarding Kulane National Park. We are unable to be in Ottawa for proposed committee meeting June 6, 1973. We would be available to present our representation Wednesday June 13 1973. Confirm travel expenses for Phillips and Kapy will be reimbursed by your committee.

It is signed by Mr. Kapy. The Law Clerk directs my attention to rule 83, which reads:

The Clerk of the Senate is authorized to pay every witness invited or summoned to attend before a select committee . . .

A "select committee"?

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: This committee is a select committee.

The Acting Chairman: That is right. The rule continues:

. . . a reasonable sum for his living and travelling expenses, upon the certificate of the clerk of the committee attesting to the fact that the witness attended before the committee by invitation or summons.

Your temporary chairman is completely lost in this respect and does not know what to do.

Senator Flynn: Maybe Senator Laing will move that we should invite them.

Senator Cook: It seems to be a proper case.

Senator Laing: I do not know. I believe both of those organizations could finance themselves. I am a little surprised at this aspect of the wire.

Senator Flynn: I would leave it to the chairman and Senator Laing to make the decision, if they so wish.

The Acting Chairman: We would have to make it very quickly.

Senator Laing: I know exactly what caused this, it was the presence of Mr. George Smith, a remarkably competent engineer who went there and encouraged them in the idea that there is a potential of electric power there exceeding Churchill Falls, which should not be overlooked and should be brought to the attention of the committee.

The Acting Chairman: Must two representatives attend to make this type of presentation, one from the Yukon and one from the Northwest Territories?

Senator Laing: I presume it is to give more weight to the representation. The Whitehorse Chamber of Commerce has many members who are not in the mining business.

Senator Cook: Consider the repercussions if we deny their request. I believe it would be far more desirable to accede to the request than to tell them they must come at their own expense.

Senator Molson: It would be quite a precedent. Everyone who wishes to appear at a committee hearing could simply send a telegram for a guarantee of expenses, which might involve a new budget for our Committees Branch. In my opinion, it depends on whether they are appearing in the public interest or wish to put forward the point of view of a group.

Senator Laing: I would be worried if we did not hear them, but as at this moment I would not be worried if we did not pay their expenses.

Senator Blois: I agree. We should hear them but not pay their expenses because, as Senator Molson remarked, that would be a precedent which might give rise to trouble in the future.

Mr. Hopkins: This committee is not authorized to incur special expenses as it is, say, in connection with consideration of foreign investment. This general provision is contained in the Rules of the Senate but is rarely exercised. I do not know whether it ever has been exercised.

Senator Laing: It is an open door for abuse.

The Acting Chairman: Mr. Nicol informs me that there are people in the department who have views that they could express with reference to the point raised by Senator Laing as to the hydro potential of the area. It would not satisfy local people simply to let the committee hear departmental officials.

Senator Flynn: We could reply that we had no authority to pay them.

The Acting Chairman: I am not too sure, after reading the rules.

Senator Flynn: It all depends on whether we decide that we want to hear them.

The Acting Chairman: Would the committee direct me to reply, on behalf of the chairman, to the effect that we would be happy to hear them but that we have no resources with which to meet their expenses?

Senator Flynn: No "authority".

The Acting Chairman: I could say that the chairman has no authority to authorize payment of their expenses. Would that be satisfactory?

Hon. Senators: Agreed.

The Acting Chairman: I will arrange to have the telegram sent today.

Senator Laing: Have we agreed that next week we shall conclude the area of the bill?

The Acting Chairman: I think so. If the chairman is not available, we will arrange for the minister to be here.

The committee adjourned.

APPENDIX "A"

Areas - National and Provincial Parks

Province	Provincial Parks		National Parks	
	Area (sq. mi.)	% of Province Area	Area (sq. mi.)	% of Province Area
British Columbia	10,662.6	2.90	1,927.4	0.53
Alberta	2,717.0	1.07	20,692.0	8.10
Saskatchewan	1,801.4	.72	1,496.0	0.59
Manitoba	3,385.3	1.35	1,149.0	0.46
Ontario	18,006.4	4.35	741.7	0.19
Quebec	57,297.0	9.64	302.9	0.05
New Brunswick	81.9	0.29	166.5	0.59
Nova Scotia	19.0	0.09	739.3	3.44
Prince Edward Island	2.0	0.09	7.0	.32
Newfoundland	356.6	0.23	903.1	0.58
Yukon	14.0	0.01	8,500.0	4.10
Northwest Territories	1,935.0	0.14	16,640.0	1.28
GRAND TOTAL	96,278.2	2.49	53,264.9	1.39

National Parks			National Parks		
Name of Park	Area of Park Sq. Miles	% of Province Area	Name of Park	Area of Park Sq. Miles	% of Province Area
Glacier	521.0	0.14	Forillon	92.9	0.02
Kootenay	532.0	0.15	La Mauricie	210.0	0.03
Mt. Revelstoke	101.4	0.03	Total	302.9	0.05
Pacific Rim	266.0	0.07	Fundy	79.5	0.28
Yoho	507.0	0.14	Kouchibouguac	87.0	0.31
Total	1,927.4	0.53	Total	166.5	0.59
Banff	2,564.0	1.00	Cape Breton	367.0	1.71
Elk Island	75.0	0.03	Kejimikujik	147.3	0.68
Jasper	4,200.0	1.65	Ship Harbour	225.0	1.05
Waterton Lakes	203.0	0.08	Total	739.3	3.44
Wood Buffalo	13,650.0	5.34	Prince Edward Island	7.0	0.32
Total	20,693.0	8.10	Terra Nova	153.1	0.10
Prince Albert	1,496.0	0.59	Gros Morne	750.0	0.48
Riding Mt.	1,149.0	0.46	Total	903.1	0.58
Georgian Bay	5.5	0.01	Kluane	8,500.0	4.10
Point Pelee	9.6	0.02	Wood Buffalo	3,650.0	0.28
St. Lawrence Is.	1.6	*	Nahanni	1,840.0	0.14
Pukaskwa	725.0	0.16	East Arm Great Slave Lake	2,860.0	0.22
Total	741.7	0.19	Baffin Island	8,290.0	0.64
				16,640.0	1.28

*Percentage less than 0.01% (St. Lawrence Islands 0.003%)



FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*



Issue No. 7

WEDNESDAY, JUNE 6, 1973

Third Proceedings on the Examination of the Document
Intituled:

“Foreign Direct Investment in Canada”

(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 16, 1973:

"The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the document entitled "Foreign Direct Investment in Canada", tabled in the Senate on Monday, 15th May, 1972, and the subject-matter of any bill arising therefrom, in advance of such bill coming before the Senate, or any other matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, June 6, 1973.

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 2:30 p.m. to examine and consider document intituled: "Foreign Direct Investment in Canada".

Present: The Honourable Senators Connolly (*Ottawa West*) (*Acting Chairman*), Beaubien, Blois, Cook, Desruisseaux, Flynn, Gélinas, Hays, Laing, Martin and Molson. (11)

In attendance: Mr. E.R. Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Department of Industry, Trade and Commerce:

Mr. R.D. Gualtieri, Special Adviser to Deputy Minister.

Department of Justice:

Mr. F.E. Gibson, Legal Adviser.

Mr. D.F. Freisen, Legal Adviser.

At 4:35 p.m. the Committee adjourned until 9:30 a.m., Wednesday, June 13, 1973.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, June 6, 1973

The Standing Senate Committee on Banking, Trade and Commerce met this day at 2.30 p.m. to give consideration to the document entitled "Foreign Direct Investment in Canada."

Senator John J. Connolly (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, before we begin our consideration of the subject matter of Bill C-132, may I have the committee's instructions on two matters. Since the committee rose this morning I have drafted a telegram to Mr. Katsky of the Whitehorse Chamber of Commerce, which reads as follows:

The Senate Banking Committee. Pleased to hear evidence from you and Phillips Wednesday June 13 at 2.30 p.m. in the Senate Committee Room

We should keep in mind that we are going to have the minister before us, again on the subject matter of Bill C-132, on the morning of Wednesday, June 13, so I think we are fairly safe in having them here for 2.30 p.m.

The telegram continues:

Regret no authority to pay your expenses

John J. Connolly
Acting Chairman

Is that satisfactory?

Senator Beaubien: For my friends, I cannot speak.

Senator Molson: There is no conflict with the house in the afternoon? I am just wondering if it would be better to have them here for 12 noon and then adjourn until 2.30 p.m., if conditions are favourable. It is entirely up to you.

The Acting Chairman: If the house does sit that afternoon, then what we probably will have to do is get leave by way of motion to sit while the house is sitting. It may make a difference to their flight plans if they know that we are not going to hear from then until 2.30 p.m. However, if you wish, I shall change that to read 12 noon.

Senator Molson: It was just a thought.

The Acting Chairman: I think we can cover ourselves, should the house sit that afternoon.

Shall I send the telegram in this form?

Hon. Senators: Agreed.

The Acting Chairman: The other point I should mention is this: I have had a word with the Leader of the Government in the Senate as to having a notice of motion placed on the Order Paper for a wider ranging consideration of the National Parks legislation and the administration touching the parks, and he agrees that this would be a good project for a special committee of the Senate to undertake. As to the timing, no decision has been taken, but no doubt it will come along in the normal course.

Does that meet the committee's view?

Senator Molson: You are suggesting the motion be put without regard to a specific date?

The Acting Chairman: The way in which I put it to the leader was, "When it is deemed appropriate". The month of June may not be an appropriate time. I put it to the leader that a notice of motion might be placed on the Senate Order Paper drawing the attention of the Senate to this and the proposal to set up a special committee to deal with the parks and their administration.

Senator Molson: It can also go as a recommendation of this committee.

The Acting Chairman: Yes, that could be included in our report at the conclusion of our study of Bill S-4.

Senator Molson: It is an option that is open.

The Acting Chairman: Yes, quite so. I think it might be a good stop-gap to put it in the report of the committee.

The only other piece of routine business I should get instructions on is with respect to a telephone call from a Mr. Garth MacDonald of the Canadian Institution of Public Real Estate Companies in Toronto. Mr. MacDonald called the Committees Branch this morning requesting that his organization have an opportunity to make representations to this committee in respect of the foreign investment review bill.

The secretary of the committee, Mr. Coderre, tells me that on the morning of Thursday, June 14 we will have before us the Canadian Petroleum Association and Canadian Properties Limited, again, in respect of the subject matter of Bill C-132.

I am told that second brief is a very short one, and it is felt that perhaps Mr. MacDonald's organization might be informed that if it cares to come on Thursday, June 14, we would be glad to hear them some time during that day. Is that satisfactory to the committee?

Hon. Senators: Agreed.

The Acting Chairman: Honourable senators, we have with us today Mr. Gualtieri, from the Department of Industry, Trade and Commerce, and Mr. Gibson, from the Department of Justice. As I mentioned this morning, Senator Hayden thought that we might make better progress today if we avoid the jurisdictional problem that we were engaged in a week ago. After discussing it with him, we both came to the conclusion that it might be helpful today if these two gentlemen would, first of all, give us the highlights of the bill, explain the mechanics of it and then, if necessary, have them take us through it clause by clause. This, of course, would be in preparation for the meeting with the minister a week from today.

I have spoken to both Mr. Gualtieri and Mr. Gibson and they are quite prepared to do it in that fashion.

Does that meet with the committee's approval?

Hon. Senators: Agreed.

Senator Blois: Mr. Chairman, do we have additional copies of the Bill?

The Acting Chairman: Yes, senator.

Mr. Gualtieri, you heard my introductory remarks as to our method of proceeding this afternoon, so I need not make another speech. Perhaps you could take over at this point.

Mr. R. D. Gualtieri, Special Adviser on Foreign Investment to the Deputy Minister, Department of Industry, Trade and Commerce: Thank you, Mr. Chairman.

Honourable senators are familiar with the major tests of the bill, the "significant benefit" tests and the factors in clause 2(2) of the bill, which clause attempts to define in a little more precise fashion what "significant benefit" means.

You are familiar that the bill deals only with a restricted group of transactions, the takeover of a Canadian business, in the first instance; secondly, the establishment of a new business by a foreigner not already doing business in Canada; and thirdly the establishment of a business in an unrelated line of activity by a foreigner already doing business in Canada. The latter two categories are to come into effect some time after the government has had some experience in such takeovers. You are familiar with that general structure.

I think what might be useful this afternoon would be for me to try to take you through, in a little more detail, some of the key concepts that underline the broad policy that I have just described. The key concepts I have in mind are: what we mean by a Canadian business; what is a non-eligible person; when under this bill is there an acquisition of control; what we mean when we say that we are going to review the establishment of a new business; and then what we mean by unrelated business—when a foreigner already here moves into an unrelated line of activity what factors would we use to determine whether or not that new establishment is or is not related.

Dealing first with the concept of a Canadian business enterprise which is the object of a takeover, in the bill it has been defined

extremely widely and, in effect, it covers virtually all business carried on in Canada.

The Acting Chairman: That is in clause 3, in the definition.

Mr. Gualtieri: That is correct. A Canadian business enterprise includes any corporation incorporated in Canada, regardless of whether it is federally or provincially incorporated or whether or not it is Canadian or foreign controlled.

Senator Hays: Or if it is not incorporated, is that part of it too?

Mr. Gualtieri: That is the second category I mentioned, an unincorporated business carried on in Canada by individuals who are Canadian citizens or residents; and thirdly, unincorporated branches of foreign controlled corporations.

I want to underline that the review process will apply to foreign controlled subsidiaries or branches, either in terms of their establishment or in terms of the takeover that might occur.

The reasons for this I think we touched on during the course of our previous meeting, but I might just go back and refresh your memories.

We felt it was important to include takeovers, for example, of existing foreign controlled firms, because at the time of acquisition the acquirer could significantly change the *modus operandi* of that particular business, either by doing something to harm significantly the Canadian interest; or, more positively, it provides an opportunity to talk to the foreign acquirer about increasing the benefits to Canada.

The Acting Chairman: You gave an example of that on the last occasion you spoke to us. Perhaps you would use that example again.

Mr. Gualtieri: I am not sure which example I gave; but let us take, for example, if General Motors were to take over Chrysler, it is conceivable that there could be some form of further rationalization or integration in the operations, which would mean more productive and efficient industry here in Canada; or perhaps more to the point, since we are familiar with the fact that at the moment most of the production design and development work is concentrated in the automotive industry in the United States, we might use that as an opportunity to try to persuade Detroit to move some of that more managerial type of activity, some of that more sophisticated design and development work, to Canada in connection with the general line of acquisition of control.

The Acting Chairman: Or, on the other side of the coin, if, for example, GM took over Chrysler and decided to close down the Chrysler plants in Canada and export those jobs to the United States or some place else, then you might be able to prevent the takeover under this legislation because the damage to the economy would be significant, presumably.

Mr. Gualtieri: Agreed, senator. In summary, on the concept of Canadian business, it is a very broad definition, giving a wide degree of coverage over almost all business activities in Canada.

The concept of non-eligible persons is really fundamental in the bill, and it is defined quite precisely. It includes, first a citizen of a foreign country who is not a landed immigrant in Canada; secondly a landed immigrant who has been here for six years and has not become a Canadian citizen—in other words, he has met the legal requirements of five years but has not taken that deliberate act of becoming a Canadian citizen; thirdly, a Canadian citizen who is not ordinarily resident in Canada; fourthly, a foreign government or agency of a foreign government; fifthly, a corporation controlled in any manner whatever by one of the above, or by a group of persons any member of which is one of the above—in other words, as the bill says, any group of persons any member of which is non-eligible.

So you will again see that the concept of non-eligible person is quite a broad one and it is designed to bring the activities of businesses that are foreign controlled, or of foreign individuals who are doing business in Canada, within the purview of the screening apparatus, in order to try to ensure that their activities are of significant benefit to Canada.

Senator Gelinas: If GM took over a motor car company here and decided to open in the United States and close down here, because of une force majeure, what happens then?

The Acting Chairman: Force majeure, in what sense?

Senator Gelinas: When they have labour troubles, labour or other conditions that would hamper them from doing their manufacturing here in Canada. How long can that condition last? I readily understand that, at the time of the takeover, the conditions would be settled and that they would have to continue their operations in Canada on a basis that would be agreeable to all concerned; but how long can you keep them on that basis?

Mr. Gualtieri: The answer to that, senator, would in part depend on the terms and conditions negotiated with the government at the time of the acquisition. For example, the undertaking may have a time limit, or it may not. I would think that in business terms it makes sense to attach a time limit to many of these undertakings, simply because world business conditions change so rapidly.

Senator Gelinas: That is why, and I do not see any cause for une force majeure that may force a corporation which is under anyone to move out for certain reasons or stop or reduce their operations here.

Mr. Gualtieri: I think that some of these considerations will be taken up in the agreement in regard to the undertakings which are a condition of the allowance of the takeover. If, within the terms of the existence of that undertaking, the undertaking is broken, there is a provision in the bill for the minister to go to the courts and get an order directing that that undertaking be fulfilled. I think we all recognize that that is a very stiff and severe remedy.

In some cases, at least, when the undertaking is broken there would be some thought of an official settlement, especially if the undertaking is broken as a result, as you say, of force majeure. It could, for example, be an undertaking relating to expanding production at a certain rate when the market for that particular

product collapses. It would not be sensible to force that person to increase his production when he could not sell it. In those circumstances I would envisage that there would be some sort of alternative agreed upon by the government and the investor.

Senator Gelinas: Is that provided in the bill?

Mr. Gualtieri: No, I do not think it is contained in the bill, but it is contained in the government policy statement as to how it would administer certain sections of the bill.

The Acting Chairman: Arising from Senator Gélinas' question, I suppose that in the event that approval was given by the authority conferred by this bill to allow the take-over to go forward, and if after that conditions changed, due to force majeure, perhaps a big fire destroying a tremendous plant or an explosion, probably the conditions at that time could not be considered to be the same as those which obtained at the time the approval was granted for the take-over. What would happen in a case such as that? Is there provision in the bill to enable the minister to insist to the letter upon the original take-over arrangement and the conditions attached to it?

Mr. Gualtieri: As I indicated, the bill contains a clause which, in the case of an undertaking being broken, allows the minister to take action in court.

The Acting Chairman: That is with respect to a wilful breaking, but this is not a wilful breaking, as I understand Senator Gélinas.

Mr. Gualtieri: I do not think there is anything in the bill which deals with the force majeure issue. In my opinion, the general law surrounding contracts is relevant. I am not sufficiently au fait precisely as to the rules and regulations that have devolved around the contract law.

Mr. F.E. Gibson, Director of Legislation Section, Department of Justice: Mr. Chairman, I am not sure that there is any real point of contract law involved. We would anticipate that, in view of the stated position of the government it is the intention of this bill to prevent an investment in Canada, in the negotiating process any undertakings that were obtained would be reasonably negotiated and not such as would put a foreign investor in a position where he could simply not afford to take the risk of coming into Canada. An undertaking that, on its face, was of such a nature that it would force a foreign investor to take the risk of living up to that undertaking in circumstances of a complete disaster situation is very difficult to imagine. It is not rational to expect the government to attempt to extract such an undertaking and, certainly, in my knowledge of business it is not likely that foreign investors would be inclined to give it.

Senator Gelinas: Why could force majeure not be included in the bill? I heard this morning of a mining company which, due to force majeure labour conditions, will not deliver copper for the next three months, which is a serious situation at the moment.

Mr. Gibson: Mr. Chairman, really the only answer I can give to that is that in our experience force majeure is a very difficult factor

to define. What constitutes one man's idea of force majeure from his point of view, will not constitute it from another's point of view. In the final analysis, in a difficult circumstance it is possible to end up in court for a determination as to whether or not the court can ask the particular investor to meet the conditions of an undertaking under a different set of conditions.

Senator Gelinas: I would prefer the interpretation of force majeure over government policy, because governments and policies do change. Any attempt to regulate business through government policy will encounter problems.

Mr. Gibson: I accept that point, Mr. Chairman, and can only say that in the last analysis the judgment of the courts as to whether they can reasonably enforce or even make an order in a given set of circumstances that a particular investor carry out a particular course of conduct will not often occur. As you know, courts are not very often moved to make an order that is unenforceable; they hold back from doing that in every possible circumstance. I would be of the view that in force majeure circumstances the government, even if it wished to take an absolutely arbitrary position, could not find a court that would issue an order that would be meaningful.

Senator Cook: I hope the foreign investor feels the same way.

Mr. Gualtieri: Certainly, senator, the foreign investors who have talked to me on this point have. I have been involved in this policy in this bill and its predecessor for a number of years and have found that, by and large, the consensus has been that this is quite a reasonable approach. I have not had very many foreign investors pounding the table and saying that as a result of this bill they are not going to put another dollar into this country.

The Chairman: I suppose there are some, and they may not understand it. We may receive that type of evidence saying that if this legislation is passed they will supply no more money. Senator Gélinas, have we at least dealt with this point?

Senator Gelinas: Yes; but not to my satisfaction.

The Acting Chairman: Perhaps when we discuss the mechanics of the bill and the position and the powers of the review board, your question might be germane. We may see more light at the end of the road at that time.

Mr. Gualtieri: Mr. Chairman, with your permission, I will continue with my description of the concept of "non-eligible person", which is so fundamental to the operation of the bill. I completed my description of who is a non-eligible person.

Basically, I said that it is a Canadian citizen not ordinarily resident in Canada, a landed immigrant who has been here longer than six years and has not become a Canadian citizen, a foreign government or agency of a foreign government, or a corporation controlled by one of these persons or a group of persons containing one of these individuals.

Senator Cook: Would the group be non-eligible just because one was? If a group of five, each holding 20 per cent, included one

person who was non-eligible, would that make the whole group non-eligible?

Mr. Gualtieri: Yes. If a group of five persons controls a corporation though the ownership of shares and one of those persons is a non-eligible person, then the corporation is non-eligible. Actually this is one of the points I was about to deal with. It is a tough definition, I must say.

The rationale behind that is simply that it is impossible to put the minister in the position of having to get inside the group to determine what degree of influence that particular non-eligible person exercises. In order to put into the law a degree of certainty as to how he would treat a group that contains a non-eligible person, it was decided that it would be simplest if, where there is a controlling group that contains a non-eligible person, the corporation controlled by that group of persons would be considered to be non-eligible. That provision is alleviated to a certain extent in section 3(7)(c), in which it is provided that where a corporation is controlled by the board of directors, 20 per cent of the board membership may be foreign-controlled. That is clause 3(7), on page 12. It is paragraph (c).

The Acting Chairman: It is paragraph (c) on page 12; in other words, paragraph 3(7)(c).

Mr. Gualtieri: It says, basically, that where a corporation is controlled by a board of directors, the corporation will only be considered to be non-eligible if more than 20 per cent of the board members are non-eligible persons.

Senator Desruisseaux: There is the statement made: "A Canadian citizen who is not ordinarily resident in Canada". I tried to find the definition of that. Who is "a Canadian citizen not ordinarily resident in Canada"?

Mr. Gibson: As I am sure some senators know, there has been quite a lot of jurisprudence on the concept of "ordinarily resident", particularly in the context of the tax law. If I can try to summarize it briefly, it tends to come down to the question of the circumstances existing in a particular case, the nature of the residence in or within Canada that a particular individual occupies, and the amount of time that he spends in Canada in any given year, as against the amount of time that he spends outside Canada.

It is not an abnormal situation for a businessman to have an office in Canada and in New York, and if that businessman tended to spend more than half of his time in New York the courts would say that he was "not ordinarily resident in Canada". On the other hand, if the physical count of days in a given year indicates that he spent more than half his time in Canada, he would then be considered to be ordinarily "resident in Canada".

Senator Desruisseaux: I accept what you say, but there is nothing in the bill that says that.

Mr. Gibson: That is correct. The term is not defined.

Senator Beaubien: Mr. Chairman, how will the minister decide? Will he count the days that a man spent in Canada, or would that be left to his discretion, like a few other things in this bill?

The Acting Chairman: I should think, Senator Beaubien, that the ordinary rules for the determination of residence in Canada are available to the minister, if he does not know them himself, through his advisers. The rules that have been laid down by the courts would be a guideline for the minister or anybody else to determine the count. The number of days would be one thing, but also to be considered would be where a man pays his taxes and where he has his principal residence.

Senator Flynn: You might decide to move to Bermuda and you might stay away for more than half a year.

The Acting Chairman: One hundred and eighty-six days is the magic number.

Senator Flynn: You could become a non-resident. How would the bill apply in a case like that, if a Canadian citizen became a non-resident? Would there be a takeover in a case like that?

Mr. Gualtieri: No.

Senator Flynn: There would be no takeover?

Mr. Gualtieri: No. The company involved, however, presuming that the individual controlled the company, would become non-eligible, because it would be controlled by a non-eligible person; but there would be no takeover.

Senator Flynn: If someone becomes non-eligible, there is no provision in the bill to deal with that problem?

Mr. Gualtieri: It deals with the problem to the extent that it makes the company's activities reviewable.

Senator Flynn: But it does nothing about this person or this corporation becoming non-eligible?

Mr. Gualtieri: No.

Senator Flynn: That is a smooth way out of it.

Senator Molson: Why don't we use a definition that is already in use here? Why should we get involved with a new concept? For tax purposes you have "resident" and "non-resident". Why do we not marry that to this?

Mr. Gibson: I think, in effect, that is what the bill has done.

Senator Molson: Then, why do we not say so? Would that be too complicated?

Mr. Gualtieri: I guess Mr. Gibson has just said so.

The Acting Chairman: It is a matter of fact. It is bound to be a matter of fact. You have to count the days; you have to know the circumstances of your residence, and that sort of thing. Why not have something in the bill similar to what Senator Molson and Senator Flynn have suggested?

Senator Cook: If it is a question of fact, the courts will decide on decisions that have already been made.

The Acting Chairman: Would it clarify it, Mr. Gibson?

Mr. Gibson: The difficulty, Mr. Chairman, is that under this bill, the question of an individual's ordinary residence might arise, but the same question might not arise in relation to his tax status. He may acknowledge a particular state of affairs for tax purposes, and never have the matter come before the courts under that act, without at the same time acknowledging the same situation to exist under this act.

If we were then in a position to go to the Tax Act in order to find his status, and it was undetermined under that act, we would be in a difficult position.

I would agree wholeheartedly that it is desirable to use the same concepts.

Senator Cook: I think income tax law is complicated enough.

Senator Molson: You might have him paying income tax in two jurisdictions.

Mr. Gualtieri: But that would not be as a result of this bill.

Perhaps I could continue my description of this concept of "non-eligible person", which is fundamental. I have indicated, thus far, that the people who would be considered non-eligible, and the group of persons that contains a non-eligible person, is itself non-eligible.

The third point that I should like to make about the non-eligible concept is that if a non-eligible controls a corporation in any matter whatsoever, that corporation is deemed to be non-eligible.

That, again, is an important element in the definition of "non-eligible person". It recognizes that a corporation could be controlled through other than the ownership of shares or assets, through a licensing arrangement, management contract, and so on, and if a foreigner controls the operations of a corporation through any of these other means, which are well known, that corporation would then be non-eligible.

Senator Flynn: Is the fact of operating an enterprise in this way, of acquiring control of the corporation in this manner, covered?

Mr. Gualtieri: No. That is a very important point. I was going to come to that later when I discussed the definition of acquisition of control. If I might just anticipate what I was going to say . . .

Senator Flynn: You do not have to.

Mr. Gualtieri: Fine. Perhaps I can go into that point when I come to it. Perhaps I can spend a few moments on the presumption of non-eligibility, which is a concept which seems to have caused a fair degree of confusion in the various discussions that I have heard on the bill and in some of the representations.

The Acting Chairman: You are now discussing clause 3(2) on page 5 of the bill?

Mr. Gaultieri: That is right, Mr. Chairman. Perhaps I could begin by describing the presumption and then make an unimportant point about it. The bill presumes a corporation to be non-eligible where a single non-eligible person holds 5 per cent or more of the shares of a corporation whose shares are publicly traded, or where all non-eligible persons own 25 per cent or more, again in the case of a corporation whose shares are publicly traded.

Senator Flynn: Could you repeat that again, please?

Mr. Gaultieri: Five per cent in a single hand . . .

Senator Flynn: If the shares are traded on the stock exchange?

Mr. Gaultieri: Yes—or 25 per cent if all foreigners, even if no single foreigner or non-eligible person holds 5 per cent.

Senator Desruisseaux: Does that include his wife and members of his family?

The Acting Chairman: They are all persons.

Mr. Gaultieri: Yes, they are all persons.

Senator Beaubien: Mr. Chairman, if a non-eligible person owns 5 per cent but a Canadian owns 45 per cent, surely the 5 per cent does not count, does it?

Mr. Gaultieri: Agreed. I will be dealing with that point later on. That is a very crucial point.

Senator Beaubien: So it is only if he is the largest shareholder holding 5 per cent of the shares?

Mr. Gaultieri: That is correct. The numbers, incidentally, in the case of a company whose shares are not publicly traded are: 40 per cent in the hands of more than one shareholder; or, again, 5 per cent in the hands of a single shareholder.

The main point that I want to make about the presumption is that the presumption is not an attempt to define control. Whether or not that company is, in fact, foreign controlled will depend upon the facts of the case. There has been a tendency for people to say, "Well, 5 per cent of my shares are owned by a single foreigner, therefore I am foreign controlled". That is not what the bill says. The bill says you are foreign controlled if you are, in fact, foreign controlled. When any matter related to non-eligibility is before the courts, then the presumption becomes relevant, and if more than 5 per cent of the shares are held by a single individual in the case of a company whose shares are publicly traded, then the onus is on him to show that that 5 per cent does not constitute control.

Senator Cook: The light turns red.

Senator Flynn: At that particular time.

Mr. Gaultieri: At that particular time.

Senator Flynn: So it could change a month later, and you would not come under this bill at all?

Mr. Gaultieri: That is correct.

Senator Desruisseaux: Could I acquire control of a corporation, if I were a foreigner, by buying 5 per cent of the shares in the open market?

Mr. Gaultieri: Well, would you be trying to acquire control of the corporation?

Senator Desruisseaux: Let us say I like the corporation and I make an investment in it.

The Acting Chairman: And you are a foreigner.

Senator Desruisseaux: Let us assume I am a foreigner and I act through a trust company in the United States, with the company having no knowledge who the owner is. If that fact become known, would that then end the company?

Mr. Gaultieri: If the company does not know of your existence, it is quite clear that you are not controlling the company. Therefore, I would think that you would not have acquired control of the company.

Senator Desruisseaux: I realize that, but the fact is it is more than 5 per cent.

Senator Cook: It is only a presumption.

Mr. Gaultieri: Yes.

The Acting Chairman: It is a rebuttable presumption.

Mr. Gaultieri: That is correct, Mr. Chairman.

Senator Flynn: But once the minister has made a decision on that, new facts can come to light, new things can happen.

Mr. Gaultieri: That is right, senator.

The Acting Chairman: Isn't that the same point we had a few moments ago, Senator Flynn? The circumstances at the time the takeover is either refused or allowed may vary very materially shortly after or some time in the future. I think this arises out of Senator Gelinas' question as well. Then what happens to the entity? What is its position? I think we might get it a little later when you talk about the powers of the review board and what the conditions are. Will we?

Mr. Gaultieri: Yes.

The Acting Chairman: We should realize that the decision of the review board is going to be taken on the facts as they exist at the time the application is made, and those conditions may be completely different at a future time.

Mr. Gaultieri: That is correct, Mr. Chairman.

Senator Hays: Mr. Chairman, perhaps this is not the proper time to ask this question, but supposing I am a foreigner from Germany and I buy a \$20 million apartment building or a series of apartment buildings at an investment, let us say, of \$250,000. How is that treated under this bill?

Mr. Gualtieri: I should like to make both a specific and a general comment, if I might, to that question. You are clearly a non-eligible person; you are clearly acquiring control. The one question that arises is whether or not you are acquiring control of a Canadian business, or are you simply acquiring a piece of property? The answer to that question, I suggest, senator, really depends in large part on what sort of services that apartment building provides.

The Acting Chairman: Don't you think, Mr. Gualtieri, that if you are buying an apartment building worth \$20 million you are buying a business? That has to be a business, even though it is only a piece of real estate.

Mr. Gualtieri: In all likelihood.

Senator Hays: You are leasing 1,200 apartments, approximately.

The Acting Chairman: From a practical viewpoint you are certainly acquiring a Canadian business; you are doing more than simply buying a piece of property.

Senator Flynn: I do not know if it would be in the national interest for the Leader of the Government to be renting an apartment therein!

Senator Martin: Why not?

Senator Hays: This is what the real estate people are concerned about. There are millions and millions of dollars being invested in this way, and these deals are made very quickly, very often in the matter of a few days.

Mr. Gualtieri: In summary, by way of specific comment, I would say it depends upon whether or not that apartment building is a business. In most cases it probably is, but it would depend very much on the facts of the case. By way of general comment, I want to say that at the moment we are reviewing the application of this bill in the real estate area.

Senator Hays: I think it is probably an important point. How do you tie this bill in to this sort of exercise?

Senator Cook: The bill states:

"business" includes any undertaking or enterprise carried on in anticipation of profit;

Senator Hays: A group of Japanese recently purchased \$11 million worth of land. They have given control of 51 per cent of it to an Albertan, but they own part of it, so they would come under this bill, I take it.

Mr. Gualtieri: The acquisition of land *per se* . . .

Senator Hays: It is a jurisdictional matter, I suppose.

Mr. Gualtieri: It would not come under this bill, I would say, because that would not be a business; that would be the acquisition of property.

Senator Hays: Well, it is a big operation; they are going to have 10,000 cows out there producing calves.

The Acting Chairman: But they are not there now. That is the point. They are not buying the cattle, or whatever else is required to run that kind of an operation.

Senator Hays: Yes, they are.

The Acting Chairman: Well, then, you do have a business.

Mr. Gualtieri: Yes, you might have a business in that case. I thought you were speaking of the acquisition of raw land.

Senator Hays: If you are acquiring a business, then this act will apply.

The Acting Chairman: Your further consideration, I take it, is fairly well restricted to the acquisition, in the case of Senator Hays' example, just on the real estate without any other assets, without any enterprise being acquired, other than the land, if you can consider land to be an enterprise. I do not think it is; it is real estate.

Senator Cook: Even if they scratch a road on it, it can be considered a business under the Income Tax Act. It would be considered a business under the Income Tax Act; and I think it could be a business under this act also.

Mr. Gualtieri: I would mention again, gentlemen, that the application of this bill to the real estate industry is under review.

The Acting Chairman: What are you telling us now? Are you telling us that you might be amending the definition of "business"?

Senator Cook: You do not have to.

Mr. Gualtieri: I really do not know what the outcome is likely to be, because it is before the minister.

Senator Flynn: If you were to exempt the ownership of, let us say, land and immovables, would you run counter to legislation that is now contemplated by many provincial legislatures, the use of land and so on and so forth?

Mr. Gualtieri: The question is whether or not one should attempt to deal with everything in this bill. This bill basically is concerned with business activity. If we want to control the use of land and land use questions, I would have thought that might best be done through other legislation.

Senator Flynn: You mean you would be inclined to leave that to the provincial jurisdiction?

Mr. Gualtieri: As a matter of fact, this is a matter which is being reviewed at the federal-provincial level at the moment, as you are aware.

Senator Flynn: There are some bills now being considered, I understand, in British Columbia and Alberta.

Mr. Gualtieri: And in Saskatchewan, Prince Edward Island and Ontario, I believe.

Senator Hays: What countries have a similar bill, or is this a copy of other bills? I presume you have looked at other bills that can be considered foreign takeover and control bills? Or is this something of a great new art concept, that we have never looked at the German, English, Australian or Mexican ones?

Mr. Gualtieri: The government did look at the policies other countries have used in controlling foreign ownership and control, but very few countries have specific legislation on the books which deals specifically with foreign investment. Most of them use other mechanisms, largely exchange controls, in order to control foreign investment. So, to my knowledge, there is no precise parallel to the bill that we have—although, subsequent to the government introducing its bill on foreign investment, both the Australians and the Mexicans borrowed heavily from the work that we did, in implementing laws of their own.

Senator Hays: What about their 51 per cent on a board and that sort of thing?

Senator Flynn: I would suggest that it is showing over-confidence, even before we have adopted it, to copy it.

Mr. Gualtieri: Is this a form of flattery, senator?

Senator Flynn: Indeed it is.

Senator Cook: So, you consider there is no precise parallel. Would you consider leaving out the word "precise"?

Senator Molson: Isn't there a licensing of businesses in a great many places, that if you do not comply with their wishes you cannot continue on with the business? Is that not a fact just as effective as legislation?

Mr. Gualtieri: Yes, that is so.

Senator Molson: A licensing operation, so you are not allowed to operate.

Mr. Gualtieri: Yes.

Senator Flynn: It all depends on how much discretion there is in the issuing of licences. You have licensing at the municipal level, but it is really not a licence, it is merely a power to ask for a fee to do business. If to qualify for a licence you have to meet a certain number of requirements, it comes to the same thing.

Mr. Gualtieri: Honourable senators, before leaving the concept of "non-eligible person", I might summarize by emphasizing one

fact. That is that the level of the presumptions,—25, 75, 40, 60, 20 per cent—is not relevant to the central point of control, because that depends on the facts of the case; and the level of the presumptions would not change the facts of control one iota, no matter what numbers were chosen. That seems to have been the concept which we have had a great difficulty in explaining, and I hope that as a result of your meetings, senators, we may be more fortunate in having this point elucidated and explained so as obviate the difficulty in communicating on this subject.

I would now like to turn briefly to the concept of acquisition of control. The definition of "acquisition of control" in the bill is not as broad as in the definition of "non-eligible person". A corporation is deemed non-eligible if it is controlled in any manner whatever by a non-eligible person. In the case of acquisition of control, there are only two routes through which control can be acquired.

The Acting Chairman: You are talking now to page 6, clause 3(3).

Mr. Gualtieri: That is correct, sir. Those two routes are through the acquisition of shares or through the acquisition of all or substantially all of the property. Those two groups, of course, cover the vast majority of cases where control shifts from one party to another.

Acquisition of control would be conclusively deemed if a non-eligible person purchases more than 50 per cent of the voting shares of the Canadian corporation or, alternatively, if he purchases all or substantially all of the property used in carrying on business in Canada. That is at the top end. More than 50 per cent—deemed acquisition.

Below 5 per cent, and I am now speaking to clause 3(3)(b) on page 6, the acquisition of less than 5 per cent of the voting shares of a public trading corporation, or less than 20 per cent in the case of a private corporation, will not in itself constitute the acquisition of control or a cause for review, but, of course, in conjunction with, for example, past holdings of say 47 per cent, it could lead to an acquisition of control or a review. Between 5 and 50 per cent in the case of a public corporation, or 20 and 50 per cent in the case of a private corporation, the presumption of the acquisition of control arises, but the question of whether control has actually been acquired, as in the case of the presumption on non-eligibility, is determined by the actual facts of the case. Again, I wish to emphasize that the presumptive levels do not change; it is the fact of whether or not there has been an acquisition of control.

The Acting Chairman: Are you telling us that over 50 per cent is a non-rebuttable presumption?

Mr. Gualtieri: Correct, sir.

The Acting Chairman: But below 50 per cent, even with your guidelines, the presumption is rebutted?

Mr. Gualtieri: Yes, sir.

The Acting Chairman: In every case?

Mr. Gualtieri: Except below 5 per cent.

The Acting Chairman: Below 5 per cent there is no presumption?

Mr. Gualtieri: Correct; and the onus of proof would then be on the government.

The Acting Chairman: On the applicant, to show that he does not come under any prohibition.

Senator Molson: Or below 20 per cent of a private company; below 5 per cent, any one individual.

Mr. Gualtieri: Yes.

Mr. Dufferin F. Friesen, Legal Adviser, Regional and Departmental Services Section, Department of Justice: Mr. Chairman, if a non-eligible person acquires less than 5 per cent of the shares of a corporation then of course, the onus of showing that that person has acquired control of the corporation would be on the government.

The Acting Chairman: Yes.

Senator Flynn: What would happen if a second non-eligible person purchases another 3 per cent and it goes above 5 per cent?

Mr. Gualtieri: Nothing, because there is no proposal to acquire control. It is important to underline that this bill will not, or should not, in any way affect portfolio type investment by insurance companies, mutual funds, pension funds and so on. These institutions do not, as a general rule, go out to acquire control. Therefore, even if they acquire over 5 per cent of a Canadian company whose shares are publicly traded, they do not have to worry about the review process, because they are not going out to acquire control of that particular company.

Senator Flynn: The end result might be the absolute control of the corporation by non-eligible persons.

Mr. Gualtieri: Firstly, that would depend upon whether the person purchasing the shares is in a position to control; secondly, whether he intends to control.

Senator Flynn: Yes, if he intends. I have had some experience, not with very big business, but with shares being sold to U.S. residents. It might be 1 per cent, 2 per cent, then 5 per cent, and finally over 50 per cent. They are unrelated, but it is a foreign-controlled business in fact.

Mr. Friesen: Mr. Chairman, I might comment that there is also a general presumption that a corporation is foreign-controlled if 25 per cent of the shares are owned by non-eligible persons, whether or not those non-eligible persons are acting in concert.

Senator Flynn: Yes, but if they are in their purchases, subsequently, at what time do you enter the picture? Suppose 18 per cent is controlled by unrelated non-eligible persons and another person owns less than 5 per cent but it goes over 20 per cent in total?

Mr. Friesen: The point at which we enter the picture is when the corporation in fact becomes foreign-controlled.

Senator Flynn: In fact.

Mr. Friesen: That is right. If a substantial number of shares, even over 50 per cent, are owned by non-eligible persons who do not act in concert with one another, and in fact there is no identifiable person or persons who alone control the corporation, the corporation would be presumed to be controlled by the board of directors.

Senator Flynn: Is that contained in the bill?

Mr. Friesen: It is provided in clause 3(7), at page 12.

Senator Flynn: It is presumed to be controlled by the board of directors and the eligibility of the members of the board would be considered.

Mr. Friesen: It would determine the eligibility status of the corporation.

Mr. Gualtieri: It is important for me to point out at this juncture that we have now slipped from discussing the concept of acquisition of control, which is one important concept of the bill, back to our earlier discussion of whether a person is a non-eligible person and subject to review in terms of any acquisitions or new businesses he might want to establish. It is very important that these two concepts, whether or not you are non-eligible and whether or not you are in fact acquiring control, be kept distinct, because different facts are relevant and, of course, different presumptions apply.

Senator Flynn: Although they may conflict on given occasions.

Mr. Gualtieri: As you pointed out, senator, it is possible for a corporation to become non-eligible without there being an acquisition of control, which is perhaps a *prima facie* contradiction, but that can occur under the provisions of this bill.

Senator Hays: How will you handle control by debt? A man is in trouble with his company and cannot raise money in Canada, and he borrows \$25 million from Switzerland. Then he surely controls the company.

Mr. Gualtieri: Under the definition in the bill at the moment, senator, that would not constitute an acquisition of control and hence be subject to review, because the Swiss bank or financier has not purchased shares and he has not purchased all or substantially all of the property.

Senator Desruisseaux: But the shares would be used as collateral.

Mr. Gualtieri: That is quite possible.

Senator Hays: There is no question about that.

Mr. Gualtieri: The interesting fact, however, is that there would not have been an acquisition of control of that Canadian business. By virtue of the control that that foreigner does exert, the Canadian

business now becomes non-eligible in terms of any acquisitions it might wish to make in the future.

Senator Flynn: It could be given in payment. You might owe a non-eligible person a certain sum of money, and you pay him. I am not speaking of shares now, but property. We had the case of the apartment building. I borrow a certain amount on a mortgage and in my deed provide for a clause of giving in payment. I am in default and the lender exercises his right to become owner under the clause of giving in payment.

You would not be able to exercise that without getting the okay from the minister.

Mr. Gualtieri: No, sir. There is an exemption for a person who realizes on his security if that security happens to be all of the property or shares.

Senator Flynn: That is a very good loophole.

Senator Hays: That could circumvent the whole act.

The Acting Chairman: Could we clear up the last point? You said, Mr. Gualtieri, that is provided for in the bill.

Mr. Gualtieri: Yes, in clause 3(6)(d) on page 11.

Senator Flynn: That is very clear.

Mr. Gualtieri: I am glad it is very clear to lawyers, because it is not very clear to non-legal types such as myself. But I might briefly speak to that exemption, since it has been raised. It was put in because it was felt important that the bill not place any undue obstacles in the way of debt and mortgage-type capital coming into Canada.

Senator Hays: Doesn't it water down the bill? It provides an opportunity to keep the shares in Canada down.

The Acting Chairman: Perhaps we should get this point clarified. Let us take a concrete example. Suppose you have a company, whether publicly or privately owned, and a certain number of shares had been issued to various people, all Canadians. They go abroad to float a debenture issue. The debentures are all picked up by a foreign bank or financier, or financial house, and they default. Under the terms of the debenture, they realize on their security and they take over the assets of the company—all of them.

Senator Flynn: Including the shares.

The Acting Chairman: Let us leave out the shares for a moment. We can assume that the shares have been put up as security by all the shareholders. They realize on their security and they take over the company. What you are saying is that the act wants to leave alone any proposals which bring debt money into Canada or debt securities. By that indirect method, there is a way of acquiring control of a Canadian enterprise. The acquisition of that control through realizing on its security under the terms of clause 3(6)(d),

on page 11—is not subject to the restrictions contained in this bill. Is that a good example?

Senator Gelinas: What about convertible debentures?

Senator Cook: The last few words of subsection (d) say, "not for any purpose related to the provisions of this act;" therefore lenders would be under an obligation to prove that it was, purely and simply, a loan.

Senator Flynn: The burden of proof would be on the minister in a case like that.

The Acting Chairman: The example that I gave is of a lily-pure transaction where it was a loan in good faith, where the security was put up in good faith, but they defaulted through no fault of their own, perhaps through bad management, and the security was realized.

Senator Hays: He "snuck" in the back door.

The Acting Chairman: In that case the company could be taken over by a foreign owner without review. What about the convertible debentures?

Senator Molson: Before we leave debentures, what if the financial structure of a company is such that the debentures represent such an inordinate amount of the financing capitalization of the company that he does not need to have default. He can exercise virtual control without at any time getting into the 5 per cent, 20 per cent or 40 per cent category. What do we do about that?

Mr. Gualtieri: That is not covered.

Senator Cook: The last words of the subsection say "and not for any purpose related to the provisions of this act;" The minister would say, "This whole capital set-up is illusory. You put up all the money by way of debt. You have control and, therefore, you have done this for the purpose of the provisions of this act, and you have been caught."

Senator Molson: It could come in sequence. The point that I should like to raise is that in the case of convertible debentures, the same principle applies, that the ownership of an inordinate amount of capitalization by way of debentures gave virtual control. Convertible debentures can, in fact, threaten control at any given instance, which can be, if you want, effective control.

Mr. Gualtieri: I think that is right. One would have to look at the facts of a case very carefully to see what proportion of the shares would be attached to the conversion privilege, and whether that would, in fact, be a controlling proportion.

Senator Molson: Suppose it represented over 50 per cent?

Mr. Gualtieri: I am subject to correction by Mr. Friesen, but I understand that the acquisition of the conversion rights would

constitute an acquisition of those shares under this bill. If that were a sufficient number of shares to give control, that would be the acquisition of control.

Senator Gelinas: That means that you cannot finance on the Euro-conversion money.

Senator Molson: That is another problem.

The Acting Chairman: Let us stay with this for a few moments. We may have a problem that we shall wish to point out and have rectified if necessary. You are saying that if the conversion rights that are sold on the issue of debentures or debt security, if exercised, give control to the people who hold those debt securities, the transaction is then reviewable under the act.

Senator Molson: Is that in the act?

Mr. Gualtieri: Yes. That is the outcome of clause 3(6)(d) that we have been discussing.

Senator Flynn: The last words say, "and not for any purpose related to the provisions of this act;"

The Acting Chairman: I believe Mr. Friesen has something to say.

Mr. Friesen: Mr. Chairman, paragraph 3(6)(c), on page 10, provides that the holding of a convertible debenture gives you the right to convert any shares. If you hold that, you are deemed to be in the same position as if you owned the shares. The holding of such a debenture puts you in a position similar to that if you owned the shares. Paragraph (d) on the next page makes it clear that the acquisition of such a right would be the acquisition of the shares.

Senator Hays: What page is that on?

Mr. Gualtieri: Page 11, senator.

Senator Flynn: I can give you an example. Let us assume that I have a bond issue in default and a non-eligible person buys those bonds and is entitled thereby to take over the assets . . .

The Acting Chairman: On default.

Senator Flynn: Yes, on default—if he uses that as a weapon to acquire the shares, of course that is a reviewable transaction.

Mr. Gibson: Not if the acquisition of the right was not for the purposes related to the provisions . . .

Senator Flynn: It is not for any purpose. The bond issue is in default and the offer is to give up the shares for whatever price, or the assets of the company will be taken over.

Senator Cook: There would be a block on the title as far as any foreign bondholders are concerned. When he comes to realize on his security he will have to prove to the minister that when he first put

his money up he put it up purely and solely as a loan and never, never, never intended it to gain control over the company.

Mr. Gualtieri: It would be up to the minister to prove that.

Senator Flynn: Yes, I agree with that, but don't you think it creates a rather strange situation? Let us say the bondholders are able to get their money and someone is willing to buy the bonds on the condition that they acquire the company, in that instance the minister would not agree to the acquisition of the company at the same time that that person buys the bonds.

Mr. Gualtieri: I am not sure I have followed the question.

The Acting Chairman: I will ask Senator Flynn to go over it again.

Senator Flynn: Let's say I have a bond issue in the amount of \$2 million in default and some non-eligible person buys those bonds at whatever price, let us say 100 per cent, and then the shareholders says, "Either you sell me your shares at, let's say, 25 per cent of their value or I take over the assets of the company, as I am entitled to." That would be an acquisition reviewable by the minister, would it not? The minister could refuse to allow that transaction.

Mr. Gualtieri: I think it would be clear under those circumstances that the loan agreement was for a purpose related to the provisions of the act; and, consequently, if the minister had the evidence, he would go after that chap and send him a notice requiring him to appear before the review board.

Senator Flynn: And if the purchase was conditional upon the purchase of shares, the minister could say indirectly to the bondholders, "Well, it's too bad, but I cannot allow this foreigner to pay you back."

The Acting Chairman: In other words, Senator Flynn's example would be . . .

Senator Flynn: It would be contrary to paragraph (d), to some extent.

The Acting Chairman: Senator Flynn's example would be caught by the last words in clause 3(6)(d).

Senator Flynn: But I am just thinking of the result as far as the bondholders are concerned.

Senator Gelinas: Mr. Chairman, do I understand that you can sell a convertible debenture issue to Canadians, if it carries control?

Mr. Gualtieri: That is correct.

Senator Gelinas: But if you want to sell Euro-dollars in Europe . . .

Mr. Gualtieri: You can, but it depends on the conversion privilege.

Senator Gelinas: Well, the same conversion privileges that exist in Canada. In other words, for some reason or another you cannot do your financing in Canada, so you do it in Euro-dollars and it carries the same conversion privileges. It is control.

Mr. Gualtieri: If the conversion privileges constitute control, then the transaction would be reviewable; in other words, those conversion rights would have to go through the review process.

The Acting Chairman: And the review process would get jurisdiction.

Senator Flynn: It is indirectly the same problem as mine.

Senator Molson: I have one other point to raise, Mr. Chairman. It is not a completely uncommon situation to have Canadian businesses borrowing funds from American banks. The situation can arise where, as a result of a little bad luck or perhaps, a lot of bad judgment, the business is not operating to everyone's satisfaction and the holder of the loan, the bank, usually obtains a very large say in the operations of the corporation. I do not know whether we could ever describe it as control. Perhaps not. Certainly, technically not, but, in fact, it pretty well permits or otherwise the line of conduct of the business that finds itself in that position. I do not think there is any way that that situation can be provided for, and I do not think it is provided for.

Mr. Gualtieri: It is not provided for in the present bill.

Senator Molson: I do not think it can be.

The Acting Chairman: It is not acquisition of a right ultimately to acquire the shares on default, or otherwise. What you describe, as I understand it—and I am asking the question to clear my own mind on it—is a continuing situation where an American bank is unpaid on a sizable debt and, either because it has someone on the board of directors or because it has the strings on the president, or the chief executive officer, or other directors of the company, it is exercising control without having the shares?

Senator Hays: Debt control.

Senator Cook: The worst kind.

Senator Molson: It might hold the bonds and certificates, or both, coming under section 88 or 86. In other words, it might be

The Acting Chairman: You are talking now about control?

Senator Molson: In a different way.

The Acting Chairman: When the bill talks about control, as I understand it, it is talking about share control.

Senator Flynn: Definite control.

The Acting Chairman: When we are talking about control in this example, we can almost describe it as psychological control.

Senator Flynn: Or temporary control.

The Acting Chairman: Perhaps it might be described as temporary.

Senator Flynn: I do not think it is something that anyone fears, as long as there is nothing further done in the exercising of such control. It may only be for the purposes of better management. I do not think it is what we have in mind. That type of control may only be helping the company to operate in a more efficient manner.

Senator Molson: We cannot assume that.

Senator Flynn: It only comes into play if this factual control becomes definite by the acquisition of the shares, or otherwise.

The Acting Chairman: It has to be converted from the psychological to the share control.

Senator Flynn: Otherwise it does not matter.

The Acting Chairman: Do you still have the tail end of a thought, Senator Molson?

Senator Molson: I think, really, that that supposition is a bit far out. I certainly do not think it would happen frequently.

Senator Flynn: I do not think it is something we have to worry about.

Senator Molson: Well, a few years ago we had a lot of our big companies tied up. They were told what to do by their bondholders or by the banks, or by foreign interests, and not the common shareholders. We have had preferred shareholders' committees, bondholders' committees, and all sorts of people telling our companies what they could do and what they could not do.

I am just trying to expand this to cover that type of situation. I do not think we should be bothered by it too much, but we should at least consider all the possibilities.

Senator Flynn: I think it is a good thing to consider it, I agree with you, Senator Molson. When a bank gains practical control of a business, they do it to save the business, not necessarily to take it over. If it is to take it over, then we have the provisions in the act to deal with it.

Senator Cook: This comes under clause 3(6)(c), on page 10, stating that a person who has a right under a contract can get control; and he has a convertible debenture, under which he can get control if he converts and he is in the same position. We will say that some merchant banker in Germany or England or somewhere else has done that, now is he able to sell that security he has to another merchant banker without going to the government?

The Acting Chairman: Oh, yes.

Senator Cook: No, he has not; he has control.

Mr. Gualtieri: He has the right when the act comes into force.

Senator Flynn: I think the answer is yes, as long as he has not assigned his rights to take control.

Mr. Gualtieri: I am trying to understand the facts here. Are you saying that the merchant banker has those rights the day the act comes into force, or that he acquires them subsequently?

Senator Cook: Some Canadian company does some debt financing as a result of which it acquires convertible debentures.

Mr. Gualtieri: This is after the act comes into force?

Senator Flynn: It is bought by Canadians.

Senator Cook: No, bought by some British or other person.

Senator Flynn: Oh, well.

Senator Cook: Then they decide to loosen up this and sell it to a foreigner or to sell it to some consortium in Germany or Japan. He is in the same position to have control as if he owned the property? Will that person have to go to the government for permission to sell?

Mr. Gualtieri: Yes.

The Acting Chairman: Surely not?

Mr. Gualtieri: To another non-eligible person.

The Acting Chairman: Let me use an example. You, Senator Cook, in the first instance, as a Canadian company, sell a convertible debenture to a foreigner, that is a marketable security; and that foreigner, holding that security in his portfolio, wants to liquidate it to Senator Cook, so he sells it to another one, surely that is a marketable security? And he is in Germany. How can you possibly reach him under this act?

Mr. Friesen: Honourable senators, if I might make a comment, it seems to me that it is necessary to make a distinction here between acquisition of a security which is convertible into shares, which will give you control, and acquisition of a security which will give you control in the event that the borrower defaults.

The Acting Chairman: Oh, we are not talking about that. We are not talking about that kind of case. Senator Cook has just stated his case.

Mr. Friesen: Very well. Acquisition of the security which is convertible into shares which would vest control is subject to review.

Senator Cook: What do you mean by "subject to review"? If a British insurance company has that security and wants to sell it to a German or an American or Japanese, then he cannot; the purchaser must come and get approval?

Senator Flynn: Agreed, but can he sell it? Can you sell the convertible bond to a non-eligible person, with the rights to convert

it into shares which would give you the control? Can I sell that kind of bond to a non-eligible person?

Mr. Friesen: Subject to review, subject to being approved.

Senator Flynn: Ah!

The Acting Chairman: I do not believe this and I think, with great respect, perhaps we have not explained ourselves properly. Let me just give the example, and it is Senator Cook's example. A Canadian company has issued convertible debentures and they have been considered to be a valid investment for a foreign merchant banker, an ineligible person. He takes them, with whatever restrictions are placed upon him in respect of the conversion of those debentures, when he wants to convert by Canadian law. That is so.

Senator Flynn: Under this act?

The Acting Chairman: We are considering it as if this act were passed at the moment.

Senator Flynn: Oh, but there is first the approval of the minister for the sale of those bonds.

The Acting Chairman: Oh, yes. All right. Now, perhaps at that stage, the minister can police it and can say . . .

Senator Flynn: "You won't sell it."

The Acting Chairman: "You cannot sell."

Senator Cook: Or he says, "You can sell".

The Acting Chairman: He says, "This is a good Canadian enterprise; this is a good capital investment. We want to see you get the money, bring it in and sell them the convertible debentures". Surely, after that, those convertible debentures are negotiable securities that he can sell to any other foreigner?

Senator Flynn: No, it is subject to review every time they change hands.

The Acting Chairman: How will the Company know?

Senator Flynn: It is not the company; it is the purchaser that has the burden of obtaining approval.

The Acting Chairman: Where is the burden on the purchaser in the act?

Senator Cook: Because he is in the same position as if he owned the property.

The Acting Chairman: Where does the onus lie?

Mr. Gualtieri: On the purchaser who acquired control.

Senator Molson: It is only in the event of control.

Senator Flynn: It is the acquisition which is subject to review.

Senator Molson: It is not a case of a few debentures in a large company; it is only in the event of employing conversion, if the conversion leads to acquisition.

Senator Flynn: Mr. Friesen, if the conversion is provided only in a case of default, until there is a default it does not fall under the act?

Mr. Friesen: That is right.

The Acting Chairman: What we are saying in effect then is this, and what we are questioning is this, that these securities, which without the effect of this act would have been negotiable securities in the hands of foreigners, are no longer negotiable securities; so what we are saying is that this is a restriction on the importation of foreign capital.

Senator Flynn: No doubt.

Senator Molson: They will not buy them with the restriction.

Senator Flynn: It is quite obvious that that is the purpose of the bill.

The Acting Chairman: That is quite right. That is the point I wanted to make.

Senator Cook: If it suits this investment banker or insurance company to invest \$10 million in the spring, come the following May he may like to change around.

The Acting Chairman: They may not be able to.

Senator Cook: They may want to sell 10 to Jones and take back 5. They cannot do it. Bear in mind you are a lawyer advising a foreign client.

Senator Molson: It is too complex.

The Acting Chairman: Now we know what the prosecution says, let us get the defence.

Mr. Gualtieri: I think it is important to make a few facts clear. One is that, as Senator Molson has underlined, we are only talking about a situation where those conversions give control. That is point one. I have not done a statistical sample of the number of transactions that would involve conversion into control, but I am not sure that that would be the majority of cases by any means. However, I just raise that by way of question.

Secondly, I think it is important that we realize that this is not an absolute prohibition on the foreign merchant banker from selling to another foreigner, but it does mean that that transaction would again be subject to review. The major point I want to make is to try to explain the rationale behind that provision. Let us assume that there is a Canadian business and that it is running into some trouble and goes to a British merchant banker and the British merchant

banker agrees to give him a certain amount of money in return for a convertible debenture which would give him control. He puts two of his men on the board and he may even put someone in management, depending upon the importance of the investment. The reason we want that to be subject to review is that that merchant banker probably has other operations, some in the U.K., perhaps some in Australia and South Africa. We are concerned to ensure that the operation of that Canadian business is in the best interests of Canadians. It may be that the merchant banker feels that this particular technology can best be integrated with his operation in Australia. He therefore decides to move the technology developed by this Canadian company over to the company he controls in Australia. We are concerned to safeguard against such possibilities. The same may, of course, apply if that merchant banker then attempted to sell the convertible debenture to a German investor. The same issue of public policy would apply as to what that person who is in a position to control the enterprise would do with it. We want him to come to us to make sure that his intentions for a Canadian business will be to operate it in the best interests of Canada.

Senator Cook: That is all very well in theory, but from a practical point of view the poor old British banker has to go to the Minister of Finance in Canada, hoping he will be a reasonable person but fearful that he might be locked in with this, and he will take his money and go elsewhere.

The Acting Chairman: He will not take the debentures if they are hedged around by too many conditions.

Senator Flynn: I will be very blunt. If I get the opportunity to sell these convertible bonds and find a purchaser, and three months later we have a New Democratic Party government, the man will not be able to sell them because the minister will have a different outlook on the national economy. An NDP government would be entirely different from that of the present administration.

The Acting Chairman: Senator Flynn, why do you not add the word "even" at the end of your sentence?

Senator Flynn: I mean, we always return to the discretion; this is the pitfall of the whole bill.

Mr. Gualtieri: Once more I wish to emphasize that there is no blanket prohibition; it is a question of proving "significant benefit".

Senator Beaubien: "Proving significant benefit"?

Mr. Gualtieri: Demonstrating it. The point is that an investor will weigh the obstacles, the bother of visiting the minister and discussing his proposed investment against projected returns, what he sees as his profit in the particular venture. Without naming any names, just from reading the newspapers, I know of one merchant banker who came into a Canadian company, bought at \$2.60 and the shares subsequently rose to \$24. There is a good capital gain.

Senator Cook: They are on the way down now, though.

Mr. Gaultieri: They may be. The point is that if a foreign investor thinks he can turn the enterprise around, we welcome that type of foreign investment. We do not think that the business can be turned around to the extent that the investor will have difficulty proving significant benefit. In those circumstances, I am not convinced there will be a greater deterrent to the foreign investor because he sees an opportunity to make a profit which is consistent with "significant benefit".

Senator Flynn: You are looking at it from the present outlook and perspective of our state of society. It could be different tomorrow.

Mr. Gaultieri: I agree.

Senator Cook: It is not a businessman's point of view. You have a very logical and excellent way of explaining it, but it is not a businessman's point of view.

The Acting Chairman: What would Senators Gelinas and Beaubien say as to the marketability of such securities emanating from Canada?

Senator Gelinas: There would be no problem, but my point is that if someone cannot do financing . . .

The Acting Chairman: I do not think you understood my question. Have you any comment to make as to the marketability of these debt securities sold, as in this example, abroad by a Canadian enterprise needing debt capital to carry on?

Senator Gelinas: There would be problems there, no doubt. It is a very difficult market.

The Acting Chairman: I suppose they would insist upon a very substantial discount to overcome this?

Senator Cook: Or a very high rate of interest.

Senator Beaubien: They could not be sold without permission from the Canadian government, so they would not be bought.

Senator Gelinas: In other words, the financing would be conditional on this and conditional on that. Nowadays you do not put too many conditions on it when you want to raise money.

Mr. Gaultieri: There are two issues. One is the effect this will have. There is very definitely a matter of judgment involved there. I am very interested in the comments of the two senators who have experience in this particular area, and I see the validity of their line of argument. The other avenue we would have to explore is that of the alternatives to the policy now embodied in the bill. Would a change open up a loophole of such dimensions as to effectively block the operation of the policy?

The Acting Chairman: I suspect that the committee will be raising this point with the minister next week. Perhaps it would be just as well if you would be kind enough to alert him to that fact.

Mr. Gaultieri: I will do so.

Senator Gelinas: A brief will be submitted by the Investment Dealers' Association and they will speak to this point.

The Acting Chairman: We have found out a little about it ourselves this afternoon. Shall we continue with this general review?

Mr. Gaultieri: To go very briefly over the ground I have covered thus far, I have tried to highlight our meaning of the concept of Canadian business, non-eligible persons and acquisition of control.

The only two remaining concepts on which I would like to make a few comments are those of when a new business will be considered under this bill to be established and the concept of unrelatedness. Let me first of all touch on "established".

I am now speaking to clause 3(4) on page 9. Very briefly, a new business is defined to commence in Canada when two conditions are met: firstly, there is an establishment in Canada to which one or more employees can report to work in connection with the business; secondly, the first of such employees do in fact report for work. Those are the two conditions that must be met for the review of a new business to commence.

Senator Molson: Is there a definition of "establishment"? Is there one needed?

Mr. Gaultieri: I believe there is no definition of "establishment."

Senator Flynn: I believe it is the closest you can get to "establishment". Again, you can point to some things that would operate without anyone.

The Acting Chairman: The words of subsection 4 of section 3 seem to be clear. It says:

For the purposes of this Act, a business is established in Canada only if there is an establishment in Canada to which one or more employees . . . and the time at which a business is established in Canada is the time at which the first of such employees reports for work . . .

Is that what you are saying?

Mr. Gaultieri: That is correct. I do not think there are any particular difficulties with that concept, but it is obviously needed in order to give some indication that the act in fact applies to the establishment of a new business.

The concept of "unrelated business" is a much more difficult one. It is something that we are, hopefully, going to be in a position to issue some guidelines on, because at the moment the concept of "unrelated" is undefined in the bill.

To refresh your memory, it is applicable in the case of a non-eligible person who is already in business in Canada and who wants to set up an unrelated line of activity. He would be subject to review.

I might say that my minister has laid down three very general principles, or guiding rules, to determine whether or not a business is related. He has referred to those as very general rules and they are obviously not applicable in all cases. One is where a similar product is made with different technology.

The Acting Chairman: That is unrelated?

Mr. Gualtieri: That is related. Where a similar technology is used to make a different product, that is also related; or, where there is vertical integration in either direction, either backwards to sources of supply in some fashion or other, or forward in terms of distribution, and, again, the unrelatedness concept would apply, and consequently there would be a review.

It is clear that we will have to be more precise in defining these guidelines. Otherwise one might find himself in a position where almost everything is related; because, in the input and output tables, for example, an automobile company could integrate backwards to iron ore mines and forward to petroleum and gas distribution. It is clear that the concept is not meant to have that broad an application.

The Acting Chairman: When you talk about the introduction guidelines, do you mean amendments to the present bill or regulations?

Mr. Gualtieri: We are thinking of something more informal than either amendments to the bill or regulations. It will be in the form of a statement by the minister.

I think that terminates what I wish to say about the key concepts.

Senator Molson: With regard to that definition, of a similar product by a different technology being related, it might be reasonable for a company to make, not necessarily a similar product but a product used for the same general purpose, yet you would not define it as a similar product.

I am finding it a little difficult to express what I am thinking. If you make a shovel, a hoe is perhaps not a similar product, but you are going to dig with both of them.

It seems to me that some thought should be given to the general line of business that the company is in, apart from the product, the technology, or the vertical integration.

Mr. Gualtieri: If one becomes too transfixed with products, you tie up business, because business does not operate solely in

traditional product-definition lines. On the other hand, if you broaden the definition of business too much—let us take your hoe example—you move to garden tools, such as lawnmowers . . .

Senator Molson: Let us keep to diggers. It is not really similar, but it is used for almost the same purpose.

Mr. Gualtieri: I think there is general agreement that this is a very tough concept, and one that will require some further elaboration in order to eliminate, to some extent, any uncertainty in the minds of businessmen.

Mr. Hopkins: Is there any decision-making in the bill?

Mr. Gualtieri: Not in the concept of "unrelated".

There is another important provision which I should like to mention. In connection with this uncertainty issue that I have just raised, there is a provision in the bill, in clause 4, on page 13, whereby a foreign investor, a non-eligible person, who is uncertain about how the minister would regard a particular investment, may go to the minister for a guidance opinion on whether or not he was considered to be related or unrelated.

The Acting Chairman: In other words, he could get a ruling?

Senator Cook: What stage has the bill reached in the other place?

The Acting Chairman: The minister has been before the committee. It is in the committee stage. He appeared before the Commons committee yesterday.

Senator Cook: Does the minister know whether these points have been raised there?

Mr. Gualtieri: Yesterday's meeting was the first to be held. By and large, they were still dealing with the philosophy.

Mr. Chairman, that terminates what I wish to say.

The Acting Chairman: I think the witnesses have done a very good job. They have been excellent. We shall not meet tomorrow. Our next meeting will be next Wednesday morning, when we shall deal with this bill, and at 2:30 p.m. the same day, when we shall deal with the National Parks bill. Thank you.

The committee adjourned.



FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 8

WEDNESDAY, JUNE 13, 1973

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Fourth Proceedings on the Examination of the

Document Intituled:

“Foreign Direct Investment in Canada”

(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 16, 1973:

"The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the document entitled "Foreign Direct Investment in Canada", tabled in the Senate on Monday, 15th May, 1972, and the subject-matter of any bill arising therefrom, in advance of such bill coming before the Senate, or any other matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, June 13, 1973.

(8)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to examine and consider document intituled:

“Foreign Direct Investment in Canada”.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Cook, Desruisseaux, Flynn, Laing, Macnaughton, McIlraith, Molson, Smith and Walker. (11)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Charles Albert Poissant, C.A., Mr. Charles B. Mitchell and Mr. Robert J. Cowling, Consultants.

The following witnesses were heard:

Canadian Manufacturers Association:

Mr. J. Hugh Stevens, President,
Canada Wire and Cable Limited, and
Chairman, Export Committee, C.M.A.;

Mr. D. I. W. Bruce, Q.C.,
Vice-President—Secretary and General Counsel,
Westinghouse Canada Limited,
Member, Legislation Committee, C.M.A.;

Mr. R. J. Beach, President,
Beach Industries Limited and
Chairman, Membership Committee, C.M.A.;

Mr. R. W. Becket, Q.C.,
Vice-President—Secretary and General Counsel,
Canadian International Paper Co.

In attendance:

Mr. G. C. Hughes,
Manager,
Legislation Committee, C.M.A.;

Mr. D. H. Jupp,
Ottawa Representative, C.M.A.

At 11:45 a.m. the Committee adjourned until 2:30 p.m.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, June 13, 1973

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the document entitled "Foreign Direct Investment in Canada".

Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, today we have with us representatives of the Canadian Manufacturers Association. Before I call on them, I think I should present to you counsel whom we now have to assist the committee. He is Mr. Robert J. Cowling from Montreal. We felt we might want some of the ideas we may develop in the course of our meetings on this bill drafted in some form to express our views, and we therefore thought we should have a legal adviser.

We also have Mr. Albert Poissant and Mr. Charlie Mitchell, who were with us on our consideration of tax matters. We are very happy to have them again, and we are very happy to have Mr. Cowling. Now I know that with the good advice we will get from the members of the committee, plus the advisers we have, we just cannot go wrong.

The Canadian Manufacturers Associations is here with a substantial number of representatives. I understand that Mr. Stevens will make the initial presentation. Mr. Stevens, will you introduce your group, first of all telling us who you are?

Mr. J. Hugh Stevens, President, Canadian Manufacturers Association: I am the President and Chief Executive Officer of Canada Wire and Cable Company Limited, of Toronto. With me on the delegation today are: Mr. Russ Beach, the President of Beach Industries Limited, of Smiths Falls; Mr. Douglas Bruce, Q.C., of Westinghouse Canada Limited; Mr. R. W. Becket, Q.C., of Canadian International Paper, Montreal; Mr. Graham Hughes, Mr. Donald Jupp, and Mr. Doug Montgomery of the C.M.A. staff.

The Chairman: I believe you are going to make the opening presentation.

Mr. Stevens: That is right. Mr. Chairman.

It has always been a pleasure for representatives of the Canadian Manufacturers Association to appear before Senate committees, and we are particularly grateful for this opportunity to speak in support of our submission on Bill C-132, the Foreign Investment Review bill. It is not my intention in these opening remarks to range

widely over the subject of foreign investment policy. I would rather, if I may, limit my remarks to matters arising from the bill itself.

CMA recognizes the desirability of the government tangibly providing machinery which would permit the strengthening of Canada's cultural and economic identity. Bill C-132 is an example of such machinery. We accept the fact that this bill will provide for a review of a very wide area of investment decisions.

We believe, however, that Canada should continue to enjoy foreign investment which has no adverse effect on the Canadian economy. This is not possible if the criterion of "significant benefit" is adopted. For this reason we recommend foreign investment should be permitted unless it is thought to be of detriment to Canada.

As a businessman I can tell you that one of the most important features of the administration of this proposed act will be the notice or forewarning which the government or the review agency can give of the type of investments that would be approved. In our submission we have asked for draft regulations to be issued and for the government to issue guidelines indicating as fully as possible the matters which would cause favourable consideration to be given new investments. We recognize, of course, that the government will have difficulty in tabulating a precise set of criteria which would be useable for this purpose, particularly in the early stages of the act's operation. We also recognize that the confidentiality of investment information must be respected. On the other hand, we understand that the ultimate decision by the Governor in Council will probably be given without reasons. We are therefore concerned to see that as much information as possible is made public so that investors can reasonably form an opinion as to whether or not their investment would be likely to be approved. Perhaps a regularly published compendium giving the rationale of decisions under the act would be the answer, at least in the early stages. Whether this can be done formally or informally, by regulation or by guideline, it is very important that investors have access to sufficient public information on which to make their investment decisions.

A further complication in assessing "significant benefit" is the requirement of taking into consideration provincial industrial and economic policies. We are glad the bill emphasizes the need for cooperation and consultation with the provinces and so permits a flexible administration, but we repeat our request that, as a practical matter, businessmen must have some reasonable idea, before making extensive plans, let alone financial commitments,

whether or not proposed investments are likely to be favourably considered.

We note that under the bill the thresholds for the review of takeovers would cease to apply when the new business provisions are proclaimed, except in the case of an existing foreign controlled business proposing to acquire a related business. We believe this will mean that an unnecessarily large number of investment decisions will be subject to review. We recommend that the bill should establish thresholds applicable to both takeovers and new business before the review process can be operative. If deemed necessary, these thresholds could vary according to the sector of industry concerned, and if experience indicated that the exemption provisions were being used to circumvent the intent of the act, then the act could and should be amended to remedy the situation.

We are particularly concerned about the impact of this legislation on small businesses in Canada, especially when it is considered in the light of the federal capital gains tax and various provincial succession duties. In respect of takeovers, the bill would abridge a property owner's normal right to dispose of his property as he sees fit. To mitigate this effect we recommend the minister should be required under section 2 to have regard to the property right of owners, and, in particular, the marketability in Canada of the company being taken over. We also suggest that the present thresholds of \$250,000 gross assets and \$3 million gross revenue are too low and should be increased.

Our submission contains several other points of legal concern on which members of our delegation will be pleased to comment if you have any questions. One point that is not included in our brief but which we place before you now is the desirability, in our view, for the bill to provide for an appeal from the minister's decision, particularly as to whether a business is related or unrelated. As we understand it, the bill nowhere provides for an appeal. A party would simply proceed at his peril, hoping that the courts would eventually approve his course of action in the event of prosecution. In practice, the decision of whether a certain line of business is or is not related to a company's existing business will be crucial. Rather than allow this issue to be tested in the courts only in the event of a prosecution—at which time vast sums of money may have been invested—we would urge that the bill be amended to allow the minister's decision to be immediately subject to appeal to the ordinary courts of law.

The Chairman: It seems to me, Mr. Stevens, that you are suggesting that there should be an appeal on the question as to whether a business is related or unrelated, but that may well be the minor part of the whole situation.

Let me tell you what I have in mind. We have had the department's view, supported by the Department of Justice, that subsection (2) of section 2, that is the "significant benefit" section, is exclusive. By that they meant that it is more than a guideline; the minister must make his determination of "significant benefit" within the limits of the clauses in subsection (2). Now

don't you think that you should be supporting a much broader appeal? If the minister must behave within the limits of subsection (2) of section 2, and he makes a recommendation to the Governor in Council, there is no place where you are told what were the reasons that impelled him to do that. Therefore you have no way of checking as to whether he has stayed within them or has gone outside of them. I suppose that if you had some way of establishing that he had no authority to do what he did, you might be able to enjoin him. But don't you think the question of appeal should be broader, and not only should you have the reasons, but you should have what necessarily goes with the reasons? That is to say, that if you think he has fallen away from the directions, then there should be a right of appeal.

Mr. Stevens: I believe that what you are suggesting is certainly necessary in order to satisfy those who are being affected by this—that the minister has acted within the lines set out in the act. It was for that reason that we did make the point that we believed there should be an appeal from the minister's decision.

The Chairman: But you limit it to the question of being related or unrelated.

Mr. Stevens: We said, particularly as to whether a business is related or unrelated. I think my colleagues would agree with me when I say that I think we should broaden that statement.

Mr. G. C. Hughes, Manager, Legislation Committee, Canadian Manufacturers Association: There is one problem that we considered on your question, and that is that the decision was probably more correctly that of the Governor in Council rather than of the minister. The minister makes a recommendation but the final decision would be by the Governor in Council and, rightly or wrongly, it was our view that that decision was not appealable. We would certainly agree that we would like to have the reasons for the recommendation made by the minister made public so that we could see whether or not the terms of subsection (2) of section 2 had been properly followed. But insofar as the final decision is made by the Governor in Council through an Order in Council, we have decided that that would be non-appealable.

The Chairman: Are you now speaking as a member of this delegation, or are you speaking from a legal point of view in expressing that view?

Mr. Hughes: I would hope both, sir. I think the question you have raised is a really difficult one. The association would very much like to see appeal provisions, throughout the bill. The problem is, can an Order in Council be subject to that sort of judicial review?

The Chairman: I suppose when you say that, you mean to ask if there is authority or power to do such a thing. I would think, of course, that Parliament can do anything it chooses to do. And the federal Parliament can, within the scope of the Constitution, do anything it chooses and can make any law it chooses. I think that is a fair statement. Do you agree, Senator Flynn?

Senator Flynn: Yes. I was wondering if you had in mind that a decision by the Governor in Council in principle would satisfy you, if you could have a review of the recommendations of the minister.

Mr. Hughes: I think the association would say that the reasons for the decision should be made public.

Senator Flynn: You mean, the recommendations. There are two steps there. There is a recommendation by the minister and a decision by the Governor in Council, and you intimated that you would like a review or an appeal from the recommendations of the minister, but you did not believe there should be any appeal from the decisions finally made by the Governor in Council.

Mr. Hughes: I think members of the association would be very happy if there was an appeal from both.

Mr. Stevens: I think, Mr. Chairman, the association has taken the position that this really is a political issue, and that a bill will be forthcoming, and the mechanism of implementing what becomes law will be more important, perhaps, than the fact that the bill is passed and goes into law. We do believe that it would be in the interests of Canada as a whole, and the association would support the fact that there should be an appeal on the basis—and you cannot really make an appeal unless you know the basis upon which the minister has made his decision.

The Chairman: Then you are...

Mr. Stevens: I am agreeing with you.

The Chairman: You are falling into the language we have been thinking in terms of. The recommendation of the minister is really a decision of the minister, because how does he arrive at the determination to recommend unless he makes a decision? If he makes the decision, he must have reasons for it, and those reasons become important and there should be a right of review. Do you agree with that?

Mr. Stevens: Yes, sir.

The Chairman: At that stage.

Mr. Stevens: At that stage.

The Chairman: Then you have said that "significant benefit" should be changed to "no detriment".

Mr. Stevens: "No adverse effect" or "no detriment", yes, sir.

Senator Flynn: To what?

Mr. Stevens: To the Canadian economy.

Senator Flynn: You will shift the burden.

Senator Buckwold: In this regard, I suppose the proponents of this bill would take as their fundamental concept the fact that almost all foreign investment had an adverse effect on the economy. I mean, these are the proponents of this bill. In other words, the very fact that you have foreign money that eventually may have to

be paid out as profits, dividends, is an adverse effect; or the fact that you have a company controlled in a foreign country operating here, directed by a foreign country, has an adverse effect.

Really what I am asking is: How do we get around this particular philosophical approach which, as I say, I think is fundamental to those who have originated this bill?

Senator Flynn: There is a distinction between the investment and the loan.

Mr. Stevens: Mr. Chairman, may I comment upon this? I am speaking as representing personally a Canadian-owned company and I am also speaking as representing an association in which there are a lot of companies which are foreign controlled. I think Canada has benefited, and I think you can document the benefits of foreign ownership by the fact that we would not have our standard of living if we did not have the investment that foreigners have made in Canada.

Senator Molson: Do you mean, foreign ownership or do you mean foreign investment?

Mr. Stevens: Foreign investment. Foreign investment is still going to be needed in Canada. We are told that we have to create jobs for the approximately 300,000 new entrants into the work force a year. In my industry it costs approximately \$75,000 to \$100,000 to create a job. I believe the average is somewhere in the \$75,000, \$50,000 to \$100,000 a year range, which means we have to create new money to the tune of something between 15 and 30 billion dollars a year to create these new jobs. To create saving in Canada, we cannot do it to this tune at this moment, so that we are for some time going to need foreign investment in Canada.

I think on the debit side you have the factors which were brought up by the senator just now, but you have on the credit side the creation of jobs. You have on the credit side the increase in the availability of possible access to markets, the availability the possible technology which cannot be created instantly in Canada. So that I think there are significant benefits.

Senator Buckwold: I want to pursue this a little further because it is sort of fundamental, and I have to tell you that in asking this question I am not expressing a personal point of view. I think we are getting right to the nub of what this bill is all about.

You have indicated that you do not really see too much serious effect in foreign investment. As I say, the proponents of this bill, the originators, feel that there is something fundamentally wrong with foreign investment. You have given us, then, the impression that foreign investment basically is good. Could you give me some idea of what foreign investment would be bad or detrimental?

Mr. Stevens: Every country has to protect what it considers its best national interests. I suppose one of the problems in dealing with a bill of this kind is that it is a subjective matter and everyone will have a different opinion of what Canada's national interest is. I suspect

if you ask the legislatures of each of the provinces, you will get a different answer. I preface my remarks this way because I happen to operate businesses in most of the provinces in Canada and try to be a good citizen of those provinces too.

There are certain things fundamental to the national interest and the protection of the country in time of war. For example—and I am speaking personally and not for the association—I think that we should be very reluctant to allow the control of major financial institutions to get into foreign hands, because they have some key effect on the economy.

There are other obvious sectors of the economy which are a key to industry, energy, for instance, undoubtedly in some form, unless there is some control on how our energy is used. It does not have to be exactly in the form that is set out today. I think the country in this day and age that cannot control to the greatest degree possible how it uses the energy resources it has is in difficulty.

I think there is a rightful worry about generating new technology in Canada. The generation of new technology is a very difficult and very complicated matter. To try to catch up with other nations who have been in the field for a long time is something that some of the companies in Canada are struggling with just now. I would say that some control over that area is necessary. Again, everyone's opinion is going to be different. You would never get two economists to agree, because these things are not an exact science.

Senator Buckwold: What is your idea when you talk about control? Do you mean control in the sense of the voting control, or do you mean control by the government as a matter of policy in the regulation of these particular resources or particular assets? Which do you mean?

Mr. Stevens: Well, Mr. Chairman, I think so long as effective control is in the hands of the Canadian government, because that is why we have a Canadian government, it does not really matter what the instrument is, so long as there is an effective way of sorting out what is economically good for the country, in general terms, and what is economically bad for the country.

I am afraid the matter of voting control and how it is exercised and what proportion of the company's stock is owned by a given group of shareholders, or given group of shareholders in any given country, is a very difficult matter to be specific on.

The Chairman: But you used the word "control," and I was trying to get some definition of what was included in the word "control".

Mr. Stevens: Well, a national government can effectively control the behaviour of business by regulations that it passes, in effect. It runs the risk, if it passes regulations which are too onerous, or drying up any investments from outside, which is the issue that we have before us.

The Chairman: I take it all the senators may have seen this article in the *Toronto Daily Star*. I do not think any-

body would accuse the *Toronto Daily Star* of not supporting this bill and the takeover and maybe even the ousting of foreign investment in Canada.

A man by the name of Bruce Whitestone wrote this article. What you have said just about reads like one of the paragraphs in it. This was on the editorial page of the *Toronto Daily Star* within the last two weeks, and I will just read the one paragraph towards the end of the article, in which he says:

In other words, there should be no objections imposed on non-resident investment as long as it assumed the role of a good citizen. If it failed to act in an appropriate manner, such actions should be subject to cease and desist orders by the government. In this way, Canadian interests would be served.

Now, is that along the line of what you were suggesting?

Mr. Stevens: Yes, sir. As an investor in ten countries outside Canada, we have had to follow this line in the various countries in which we made investments. In each case we have, speaking for my own country, been very careful to be good citizens of the country concerned in which we made the investment. We have had no problems at all. Most of the foreign investment which has come into Canada has behaved this way.

I suppose one can find certain instances where a case could be made that a country which has been effectively controlled by investment from outside Canada has not followed policies that were in accord with what Canada wanted, but I think those are quickly spotted and highlighted and can be controlled as they occur.

The Chairman: Senator Buckwold, I was most interested in the question you raised earlier about the philosophy behind this determination for measuring whether there is significant benefit or not. I take it that you were expressing a view not personally but for purposes of debate.

Senator Buckwold: I think we are really getting into the whole base of this act.

The Chairman: I take it, though, it was addressed to the suggestion which Mr. Stevens made about having another test.

Senator Buckwold: Yes, "adverse effect", which is a different philosophy completely.

The Chairman: I think you intended to suggest that there might be at least as many difficulties in applying that test as there would be in applying the "significant benefit" test.

Senator Buckwold: That is exactly what I meant in bringing that point forward.

Senator Molson: Mr. Chairman, I should like to ask Mr. Stevens if he feels that what this act is attempting to accomplish can be well carried out in dealing with existing foreign investments in Canada vis-à-vis the

establishment of new businesses in Canada. In other words, in your discussions and in your examination of this matter was there any thought or feeling that this bill was trying to mix apples and oranges to some extent?

Mr. Stevens: Well, Mr. Chairman, if I may make a comment and then ask Mr. Bruce to add to my comment, I think that there is some feeling amongst the members of our association, whose majority ownership rests abroad, who have been in Canada for many years and believe themselves to have acted as very good Canadian citizens, that they are now going to be subjected to a certain amount of unfairness because their Canadian competitors will be allowed to make expansion in certain areas which will be closed to them or in which, to a degree, they will suffer harassment, either intended or just the harassment of the fact that they will have to go and prepare a lot of documents and answer a lot of questions.

It seems to me that we do run a danger in this field that, if we turn off this form of investment, there may not be a Canadian entity prepared to enter that field to fill the vacuum. We may be shutting out investment which could be of value to Canada because some of these corporations have access to markets, research and development and management, and so on, which are not available to Canadians and cannot be developed here.

Senator Laing: Mr. Chairman, I want to draw to Mr. Stevens' attention that he used the word "control" in the same sentence in which he was referring to technology. I have been of the impression that one of the advantages of foreign investment in Canada, and particularly that from the United States, was that we got an immense amount of technology as a bonus. I am referring to what has happened to us since the end of the second world war. I cannot help but refer to Trans-Mountain Pipe Line. There was a mastic around that pipe, and when we built the pipe line we had to bring the Americans up to show us how to wrap the pipe.

Now in Canada we could spin a 40-inch pipe, if necessary, and I think we got that technology with the investment money that is coming into Canada on a very wide range and is probably one of the greatest bonuses of all.

You used the word "control" in the same sentence as you used the word "technology". You said that development of technology was very complex. I would think that our economy side by side with the United States' makes it impractical, financially, for us to hope to get to that level of technique.

Mr. Stevens: Mr. Chairman, specifically I would agree with Senator Laing that we did get the benefit of that technology when we got the investment; and if we are going out to try to develop new areas of trade, which Canada has to do if it is going to create all these jobs it has to create and if we are going to maintain our standard of living, then in turn we will make use of that technology if we go into using Canadian technology, which it is now, in building elsewhere.

Canada can develop its own technology to a degree, but to a much more limited degree, and, if we have a big reduction in foreign investment in Canada, we will lose the access to a lot of U.S. technology.

Senator Laing: Would you agree that, allowing for population, our technology, man for man, is equivalent to the U.S. today?

Mr. Stevens: I do not think I can really answer that question specifically.

Senator Laing: We are about even, making due allowance for the size of the economies.

Mr. Stevens: The answer to that question is very subjective. We do not generate new technology in Canada at the rate that new technology is being generated in the United States.

Senator Laing: No, but we acquire it at once.

Mr. Stevens: We acquire it at once.

Senator Laing: At once.

Mr. Stevens: And if we are clever and make use of that acquisition, we can expand on it.

Senator Laing: And this will apply to the future?

Mr. Stevens: Yes. Putting it in the context of what we are talking about, this foreign investment issue is, if I may use the word again, a political issue. We have accepted the fact that the bill is before the house, and a bill will have to go through in order to satisfy the political issues. That is the association's view. How effective or ineffective this bill is will depend on how it is administered. Unless we can assure ourselves that it is administered intelligently, and not just as a pure legal document without some application of common sense to it, we feel that there are problems. It is for that reason that I am really quite quick to agree with what the chairman suggested earlier, that we should re-state our approach concerning the matter of appeal, to make certain that the minister would have to show his reasons and how he came to a decision, so that they could be debated openly.

Senator Cook: You also want to change the test from "adverse effect" to "prejudice".

Mr. Stevens: Yes, we do. We realize the problem which is raised on that, but we think it would be better for Canada, and better in the debate and discussion, if it were put in that form.

Senator Flynn: If the rule were clear, we would know practically in advance what the decision of the Governor in Council would be, that this is the objective. Senator Buckwold said that the principle underlying the bill is that foreign investment is bad. I do not think the bill goes that far, because it provides for the acceptance of foreign investment.

The Chairman: You are so right, senator. I was just going to put this to Mr. Stevens. On the takeover part

of this bill, it contemplates the takeover of foreign investment interests by other foreign investment interests, and recognizes that there may be within that a significant benefit to Canada, so you cannot say that the bill in essence has classified foreign investment as bad. I do not think you intended to go that far, did you, Mr. Stevens?

Mr. Stevens: No, I did not. The very fact that there is a bill in itself raises a question mark in the mind of a businessman who is thinking of investing. I think it comes at a rather difficult time, because my friends outside Canada who have been investing in Canada are at the moment very lukewarm in any case about investing in Canada. If they are thinking of investing their money, they are thinking of investing it either in the Common Market, in Brazil, or wherever else they feel they can get a better home for it. Perhaps Mr. Bruce could speak to that.

The Chairman: I want to hear from Mr. Bruce also. There is one consideration I would like to get from you, Mr. Stevens, and it is this. Don't you think it might be a better bill if it were divided into two parts—That is, have the takeover part separate, with whatever the qualifications are, and deal separately with the establishment of new business and unrelated business, having different tests? Maybe your "no discrimination" would be a better test in the matter of establishing a new business, or in the matter of whether another business by an existing non-eligible person is related or unrelated. Don't you think that an easier and simpler test on that would be "no detriment"? I can see, for the reasons Senator Buckwold mentioned when he was rationalizing the subject, that saying "no detriment" on a takeover may present a lot of problems, and you would not really be getting the effective answer.

Mr. Stevens: I do not think that in our deliberations we specifically covered that point. I think I would probably be giving the consensus in agreeing with you that that would probably be a good thing, that either the legislation be in two parts, or separated, or that there should be two bills.

Senator Flynn: You might as well scrap the bill and start an entirely new one.

Senator Cook: It would not be a bad idea.

The Chairman: That has been done before.

Senator Flynn: I know.

The Chairman: And by us.

Senator Flynn: We are coming to that conclusion, I think.

The Chairman: Maybe.

Senator Burchill: I am concerned about the very point that Mr. Stevens mentioned a few moments ago relating to the effect this bill is having right now on foreign investment, making people lukewarm as to whether they

will invest in Canada. Hasn't the Canadian government in the past prevented takeovers? Are there not instances where the Canadian government has prevented takeovers they regard as injurious to Canada's welfare?

The Chairman: Yes. I can recall one where they did it without any legislation.

Senator Burchill: Exactly.

Senator Flynn: By merely threatening.

Senator Burchill: Then why is it necessary to have this bill?

Senator Flynn: On that previous case, it has to be remembered that the government only threatened to legislate about it.

Senator Burchill: They accomplished it.

The Chairman: All you have to do is threaten, and foreign capital just would not come in.

Senator Flynn: That is right.

The Chairman: You do not need a bill.

Senator Flynn: It is even worse if the threat is contained in legislation. Here we will only have a threat that the recommendation of the minister will be negative.

Senator Buckwold: I should like to ask Mr. Stevens another question. I was a little disturbed at your last statement, in which you indicated that foreign capital which otherwise might come into Canada is now disturbed at the implications of a bill such as this and may be seeking other countries in which to invest. You said earlier that you are investing in ten countries. Would you say, generally, that there are no regulations affecting foreign investments in those ten countries, that you just go in without asking anybody and do anything you want, without any kind of government regulation? Is that what you are implying?

Mr. Stevens: We started investing in countries outside Canada in 1960, or we started investigating in 1958. Except in four cases, which are recent, of the ten countries, we did not have to go through any very formal procedures. We made certain that the country concerned knew we were coming in. In any case, we went in in partnership with nationals. Most of those could be classed as developing countries. I am careful to say "most", because some of the countries we have gone into, such as Australia and Bazil, might not want to be classified under that term. The way that their economies have been growing and the time in the development of the world economy has been different from when people made their original investments in Canada people who now have a stake in Canada, who have established themselves here and who have contributed to the Canadian economy. I think the conditions are different. I fact, I could refer directly to Mexico where we made investments in 1962. We, as a company, did not get any permission from the Mexican government.

Senator Buckwold: But you did not have a controlling interest?

Mr. Stevens: No.

Senator Molson: You could not have a controlling interest; it would have been impossible.

Mr. Stevens: No, that is not true. Not at that time. In the manufacturing industry there were no strings, but in the resource industries there were strings. Even today in Mexico, you may have, if it is in the interests of Mexico, a 100 per cent foreign-owned company. In fact, a friend of mine is setting one up to make automobile harness today.

Senator Buckwold: But you said "in the interests of Mexico."

Mr. Stevens: Yes. But they have had controls for a much longer period and they have tried to manage their economy in a way distinctly different from that chosen by Canada. Everyone is trying to do everything in too great a hurry, in my opinion. We have tried to change our tax structure and our competition policy, all the things that affect the establishment of business in trying to react to the demands from a highly vocal group. Inasmuch as they are dissatisfied with the way we are doing things, they are vocal, but they do not seem to have done too much research. The same thing is true about foreign investment. A lot of foreign investment came here in order to take advantage of the tariff arrangements because we had preferential tariff arrangements, and those have disappeared gradually. There is not the same incentive for the people who came here under those arrangements to continue to invest. Take an American company that can now form a DISC. I know several who have investments here and who have formed DISCs and who are not going to invest further in Canada. There is no further incentive. They have the DISC and they have sufficient presence here so they do not want to invest any more. There are other places where they can put their money.

Senator Buckwold: But isn't the whole DISC program the reason for an act like this, where a foreign government can affect the economy of the branch plant location?

The Chairman: But isn't that just as important to us?

Senator Buckwold: I realize that.

Mr. Stevens: I think what this act in its present proposed form is likely to do is to reinforce the effect of the DISC, which is to say foreign investment companies can say, "All right, Canadians don't want our investment; let us not put them there; we have other means and other places to put our money." In certain areas we have some very desirable things to offer, and if we are going to continue to provide a standard of living and a standard of jobs for our young people, we are going to have to have a flow of foreign investment. I do not want to talk too much off the subject you asked me about, but specifically I know of two or three American companies looking for other outlets who would normally have continued

to expand their operations here, and I think Canada will be the loser.

The Chairman: When this committee wrote the report on the taxation white paper, in the prologue there were some significant words, and may I just refresh the committee's memory on these? For instance, we said:

Economic growth in Canada can come about only through the investment of capital and savings by Canadians or foreigners plus the industry, skill and know-how of our people in the use of such capital and savings.

Mr. Stevens: Agreed.

The Chairman: Then we say:

Canada is, of necessity, a capital importing country.

Mr. Stevens: At the moment it is, sir.

The Chairman: And then we say:

The development of our natural resources such as mining and gas and oil require substantial risk capital which in the past has come largely from the United States mainly because of our political and economic stability.

Mr. Stevens: I agree.

The Chairman: Then we say:

More and more, however, the position and approach of the United States is undergoing change so that it is now exporting capital outside of Canada and more generally around the world where wages, taxes and other costs are more favourable.

Mr. Stevens: That is generally true.

The Chairman: Then we go on to say:

This change in approach and the expansion of United States operations abroad arise by reason of their balance of payments requirements and otherwise.

Mr. Stevens: Yes, sir.

The Chairman: And we go on:

The competition for capital, including risk capital, in world markets makes it necessary that Canada meets such competition or suffer a diminution in capital inflow with disastrous effects on our economic growth, prosperity and standards of living.

Mr. Stevens: I would agree with that.

The Chairman: Finally, we said:

The Guidelines for Canadian tax policy in these circumstances must blend equity with our capital needs and maintenance of our competitive position in the export market.

Then we go on to say:

It is not enough to achieve equity in taxation if it takes place at the expense of reduced economic growth. We cannot afford to put a chill on the initia-

tive of our industry and on those people who are making such increased economic growth possible.

Mr. Stevens: I would agree with that.

Senator Flynn: It was not very convincing to the government.

The Chairman: There was something Mr. Stevens said a few minutes ago, and I am not sure he realized the full significance of what he was saying. Simply because there is a bill in the Commons, that does not necessarily mean that we are going to have a law in relation to that bill at some future time.

Mr. Stevens: I understand that, Mr. Chairman.

The Chairman: If we do not approve of it, or if we change it and the government does not accept the changes, then we won't have a bill to become law.

Senator Molson: Could I get the end of the answer to my question?

The Chairman: Perhaps you should restate the question to Mr. Stevens.

Senator Molson: My question really was this: Did he think, in the study of the bill, that perhaps it was trying to accomplish two different purposes in the one bill—in other words, that there was a real distinction between the problems arising from companies already established here, particularly those established over a longer period, and the part of the bill that deals with the establishment of new businesses? In this case they are usually unrelated businesses really, but I asked this because we have had several discussions of the fact and we are perhaps, in a way, mixing apples and oranges.

Mr. Stevens: Well, I think my answer would be that I think that is so, in a short word. I believe that I also went on to say, in amplification of that, that there is a feeling amongst those who have been here a long time that they have been treated unfairly, and if the bill could separate the issues, I think it could be made more workable.

Senator Molson: And perhaps more acceptable.

Mr. Stevens: And perhaps more acceptable.

The Chairman: We have been preventing Mr. Bruce from coming forward. You had some points you wanted him to deal with, Mr. Stevens?

Mr. Stevens: Mr. Bruce represents a company which has been established in Canada for a very long time, and to my knowledge in the last 25 years has been an extremely good citizen of Canada, and I think it would be a good thing to hear him on the points that have been raised.

The Chairman: Would you care to come forward?

Mr. D. I. W. Bruce, Q.C., Vice-president, Secretary and General Counsel, Westinghouse Canada, Limited; Member, Legislation Committee, Canadian Manufacturers As-

sociation: I am a little worried about this advanced billing, Mr. Chairman.

The Chairman: You just speak up so that everybody can hear you, and if it gets you into any difficulty I am sure you can work yourself out of it.

Mr. Bruce: Incidentally, Mr. Stevens said we had been good corporate citizens for the last 25 years. We have been good corporate citizens for some 70 years.

The part of the bill that has interested me particularly is the question of a related business. The draftsmen did recognize companies like ours who have been here, by saying that you could expand as far as you wanted in your existing business, but if you go into an unrelated business, whatever that means, then you must go through this screening procedure.

It struck me that this raises some unfairness in relation to our competitors who perhaps may be in an unrelated or what will be considered an unrelated business already, and because we are not at this time we are stopped from proceeding.

Perhaps I may illustrate that by postulating an absurd situation. I suggest that in business there really is no such thing as an unrelated business. After all, if Mr. Stevens makes wire and we make motors, he will ultimately not be judged by whether he makes good wire or me by whether we make good motors, but by what comes out on the bottom line of the profit and loss statement. In other words, we are all in the business of making money—dirty as that may seem!

Therefore, it seems to me that the businessman in this day needs freedom to invest his capital where he wants. Why should one discriminate against a company like ours which has been here for many years and perhaps wants to go into a new venture? It is true we are not completely stopped, and we may be able to show a significant benefit, but the problems will be that much greater.

So I feel it is very important that the act or regulations somehow give us more idea or perhaps make the minister toe the line more closely in the decision as to what is or is not a related business.

The Chairman: Your company at the present time would come in the category of a non-eligible person, is that right?

Mr. Bruce: That is right.

Senator Macnaughton: What you are saying is this, is it not? Technological changes are so rapid these days that tomorrow a business may be very much related but you would be stopped from going into it.

Mr. Bruce: Yes, in part. Our parent company in the States is in business that we would consider unrelated, like land development. Why should we not be able to draw on whatever expertise they can provide us with, if we can do this?

Senator Macnaughton: Who is to tell business what it shall do?

Mr. Bruce: Yes. As Mr. Stevens said, I hope no one is suggesting that we do not feel that Canada needs some kind of screening process in the modern day. Naturally we seek to maintain our freedoms as long as possible, which seems to be a rearguard action, and therefore we would prefer to see the onus reversed so that the government would have to prove detriment rather than we prove benefit. I would hope that you would not be too legalistic, because basically this is economic and political legislation.

The Chairman: We have the screening process in many lines in our country. We have voluntary quota agreements between Canada and other countries limiting the amount of importations. That is a form of control of our economy. I doubt if any person would be opposed to that, who would say that it is against the best interests of Canada to give that kind of limited protection to Canadian industry, but when you apply it to money—which is what this bill is doing, is it not?

Mr. Bruce: Yes.

The Chairman: Really in the control of money, of some people's money, the non-eligible person's money, who already has an investment in Canada.

Mr. Bruce: I might just give an example which I think is not untypical of many companies of our type that have been here. After all, most of us came up in the early part of this century when hydro electric power was being developed, and under the national policy at that time it was more practical to build in Canada, but we have generated all our capital in this country and have left it here.

To answer the fears of some of those present, I think it has been publicly stated that in our company we have been making record capital expenditures in recent years, and our contemplation in the immediate future is for that. So that this legislation in itself is not deterring us from making them, but I am sure if we were not generating this internally, within the company, it might deter our parent company from doing so.

The Chairman: But do you feel, as a non-eligible person in Canada that, even when you generate your own capital through your own operations in Canada, the restrictions in this bill on the establishment of a new business or a non-related business, or a related business, would affect your company?

Mr. Bruce: I am concerned about it, because, for instance, our principal competitor, Canadian General Electric Company, which is in the same legal status as we are, in fact more heavily controlled than we are abroad, is now in businesses which I think might be considered unrelated. We just have not reached the stage to get into them.

Senator Desruisseaux: Like heavy water.

Senator Buckwold: That is not a business.

Mr. Bruce: They can keep heavy water. Therefore, at this point in time, when the cut-off comes, are we not going to be able to continue to compete?

Senator Flynn: You seem to feel that it is irreversible, that there would have to be some kind of screening of all areas of economic activity in Canada.

Mr. Bruce: One will tend to go through the process.

Senator Flynn: Are you that pessimistic?

Mr. Bruce: I am not sure I understood your question.

Senator Flynn: This, of course, would establish the principle of review in all fields. We have heard before that in some other countries there is review in the field of resources and none in the field of manufacturing. I was just suggesting that you seem to think that this principle of review of all take-overs and establishment of new business is inevitable, because of the fact that the bill has been introduced in the other place. You are trying to improve the bill.

Mr. Bruce: Yes.

Senator Flynn: That is all you are trying to do; you are not fighting it.

Mr. Bruce: I think that is true, but I do feel some bill is going to come in. In fact, if Mr. Pitman's bill came in just dealing with takeovers, we elected not to be concerned about it, because we felt takeovers were something we could live with. It is this new business aspect that is concerning us, talking personally of our particular industry, not necessarily the CMA.

The Chairman: Are there any other questions you want to ask Mr. Bruce?

Senator Flynn: You are dealing with your own particular case now?

Mr. Bruce: Yes.

Senator Flynn: And are saying that a non-eligible established for a long time should not be treated in the same manner as the new business.

Mr. Bruce: But I hope it will not be regarded as purely special pleading.

Senator Flynn: No.

Mr. Bruce: I am just giving this as an example.

Senator Flynn: No, this is an aspect that should be considered.

Senator Cook: In point of fact, the review will be done by a career civil servant, not by an appointed board which represents all sorts of interests in the country, like industry or a province; it will be done by a bureaucrat doing this day after day. He does not have to give his reasons. It is all done, as it were, behind closed doors. You do not know where you stand.

Mr. Bruce: I do not know how the Americans reach their decisions, but I presume that the dog work will be done by someone in the civil service.

Senator Desruisseaux: Mr. Chairman, it has been suggested that one problem with foreign investment in Canada is that the companies normally later withdraw their capital from Canada.

Mr. Bruce, your company has been in Canada for 70 years and has increased in size tremendously, as we all know. Would you consider that the withdrawing of money by the mother company has been serious over that time?

Mr. Bruce: Do you mean that there is a likelihood that it might be withdrawn?

Senator Desruisseaux: No, I mean has it been withdrawn?

Mr. Bruce: Oh, no. In our case, I presume that so long as we continue to produce reasonably satisfactory results—they are not very satisfactory to us—we will not be bothered too much because we do not get any day-to-day direction.

Senator Desruisseaux: In fact, the money was re-used in Canada, was it not?

Mr. Bruce: That is correct.

Senator Buckwold: I think the question is whether there was a net outflow of capital over those 70 years of operation, with dividends being paid to the mother company or head office. Did Canada in fact suffer financially over those years?

Mr. Bruce: In all honesty, I can only give you my educated guess that Canada gained substantially. After all, we sell nearly \$300 million worth of goods. We employ 10,000 Canadians. The management, the top 20 people in the company, with the exception of one, are Canadians. With respect to that one exception, he was not sent up here but happened to be an immigrant. The only embarrassment in this context is that 75 per cent of the shareholders happen to be Westinghouse Electric Corporation.

Mr. Stevens: May I add something to this very point? I don't think, really, it matters very much that what has been done with the capital in Westinghouse in this country is to create jobs, to create facilities which are ongoing facilities. I think the important thing today, to the Canadian economy and to the Canadian public, is that those jobs remain and be supported. I think that there will always be capital inflows and outflows. If the capital goes out of the country it is because someone in the country has bought it, presumably, or someone else has. The capital is there in bricks and mortar, in machines and in distribution network. That is what the real capital is.

Of course, you can argue, depending upon the interest rate, whether the dividend payments or the technology payments are too high or too low, but in the net you

have something tangible there that you can see in the various Westinghouse Canada plans which exist.

I think the problem that Mr. Bruce has brought up is best illustrated by the old one about buggy whips. Technology is changing. If somebody comes to Canada to make buggy whips and finds that now buggy whips are going out of business, should we force that person—well, obviously we should not—to go bankrupt because that is all he is allowed to do? Again, it gets back to the fact of how this thing is administered.

Personally, with all due respect, I have been a civil servant in three different governments: the Indian government, the British government and even the Canadian government. I would not trust myself as a civil servant with that kind of power. I have had it, and I know there is a temptation to assume that you know a little bit more than you really do.

Senator Desruisseaux: What I was really trying to get at was whether money going out was for dividends or interest on loans for the operation of the company. But, from my own recollection of statistics that I have seen, it did not seem that the main company in the United States had withdrawn any amount outside of that.

The Chairman: Senator Desruisseaux, to follow that up, if there is a takeover and the money is coming to the present non-resident owners of the property to be taken over, and there is another group of non-residents bringing money in, the chances are they will be paying a substantial price—certainly, they will be paying the going price—so is it not a misnomer to talk about taking the money out of Canada? The enterprise still continues here.

Senator Cook: You cannot take the factories out. You cannot take the Brinco power house out of Labrador; it has to stay there. You have these benefits.

The Chairman: That is right. There were a couple of questions I wanted to ask Mr. Stevens.

Mr. Stevens, you had referred to the gross assets and gross revenue provisions in the bill in relation to acquisitions. What limits do you think there should be, if any, in relation to new businesses and the question of unrelated or related businesses?

Mr. Stevens: Mr. Chairman, that is a very difficult question to answer. In this day and age, in our deliberations, we did not come up with a specific answer, but a quarter of a million dollar investment is a very small investment indeed. Three million dollars worth of business under current conditions is a small business indeed. If you are going to clog the administrative machinery with the number of reviews that this would bring about, I do not think it would add anything to Canada. I think it is very difficult to say what the limits should be, but certainly they should be higher than the ones they put out.

The Chairman: You mean higher in relation to acquisitions?

Mr. Stevens: Yes.

The Chairman: What would you suggest?

Mr. Stevens: I think it would depend upon the type of business. If it was a very sensitive business, then, for example, I am not one who would argue against the fact that we should not have our textbooks published in Canada. For example, if that is a small business you would be looking at one amount of money, but I think if you were looking at the purchase of Canadian Westinghouse that would be something else.

At this stage I do not think the CMA is ready to come up with a specific amount, other than to say that the amounts that have been quoted are too small, which will have the effect of clogging the administrative machinery.

The Chairman: If you are limiting the financial qualifications in relation to acquisitions and you have no dollar limit on gross assets and gross incomes on new business, that would mean that on any attempt by any non-eligible person in Canada who established another business, or to establish a related business, no matter how small the dollar amount was, he would have to go to the review board.

Mr. Stevens: In our deliberations we understood that, and that was why we made the point that there should be thresholds, there should be amounts.

The Chairman: I am trying to find out if you can put figures on what the threshold is or should be.

Mr. Stevens: We have not succeeded in doing that to date. We certainly believe the figures mentioned in the bill are very subjective. One would have to do a tremendous amount of study to come up with an actual figure. The figures given to us appear to be too small, in our knowledge. For instance, there is the purchase of a farm; a tremendous number of properties would be caught in that net, which would really have no significance, yet they would have to go before this review board.

The Chairman: There is another unrelated question. I do not know whether you have had a chance to read this morning's *Globe and Mail*. The Premier of the Province of New Brunswick appeared before a committee of the other place yesterday, and among some of the things he said, speaking not only for New Brunswick but also for Nova Scotia and P.E.I., was that the government's foreign ownership bill should be scrapped or overhauled to exempt certain regions and industries. Have you any comment on that?

Mr. Stevens: I have to be careful what I say, as I am responsible for 11 plants spread across Canada, two of which happen to be in Mr. Hatfield's area, where we are very good citizens. Undoubtedly in drafting this bill, although I am no expert, the interests of the provinces had to be taken into account. I think you have in that very point the seeds of fragmentation of industry, and you also have the seeds of the divisive effect of debate about this on the political fabric of Canada. I think it would be very difficult to say that you are allowed to make such-and-such an investment in New Brunswick or Nova Scotia,

but you must not make it in Ontario or British Columbia. That might cause more problems than it would solve.

The Chairman: Did I understand you to say earlier that there were laws or statutes somewhat similar to what we propose here in some European countries, such as Switzerland?

Mr. Stevens: There is an increasing number of laws in most countries round the world. They vary; the method of control varies. I am afraid I do not have a compendium of what the laws are or how they are applied.

The Chairman: Then you could not tell us whether there is a fundamental difference either in the laws themselves or in their administration?

Mr. Stevens: I can tell you about the difference of administration of the laws in the various countries in which we have investments. How this law, if it becomes a law in Canada, will be administered would be the most important part of the whole issue as far as I am concerned. Most countries take the view that foreign investment is a good thing if they have some way of reasonably ensuring that the investment is in the interests of the country. They have different mechanisms of doing it. It suits their political structure, their nature, their economy and their environment. I do not think necessarily those same laws would suit Canada.

Senator Beaubien: I would like to ask Mr. Bruce a question that you mentioned earlier, Mr. Chairman, and which Senator Molson mentioned. Mr. Bruce, do you think it would be helpful if this bill were divided into two distinct parts, one dealing with foreign people who have been here for years and the other dealing with new takeovers? I do not think they follow very much in the same category. Do you think that would be helpful?

Mr. Bruce: I have not really looked at it. I do not know why you could not deal with the two things in one bill.

The Chairman: You could have two parts.

Senator Beaubien: The same bill but two parts.

Mr. Bruce: Yes.

Senator Beaubien: You could have different rules. If you have been here for years certain rules would apply, but if you are a newcomer they would be different.

The Chairman: Senator Beaubien, when you refer to separate bills, I think what you really meant was to have separate considerations or parts to the same bill.

Senator Beaubien: Two separate parts to the one bill.

Mr. Bruce: Yes.

Mr. Stevens: I would like to talk to that. I think that on consideration the CMA would warmly endorse dividing the bill into two parts, dealing separately with takeovers and new businesses, with separate tests for each.

The Chairman: What about the established businesses?

Mr. Bruce: Then you would have three parts, old new businesses, and new new businesses.

Senator Flynn: Would you go further and suggest it would be a good thing to classify manufacturing industries under different headings from the resource industries?

Mr. Stevens: I think if you try to do that you get into such detail that you could not make the bill so detailed as to answer every specific question.

The Chairman: What you are telling us now is that the bill we may get shortly dealing with corporate taxation on manufacturing industry will have a tough time defining what a manufacturing industry is.

Mr. Stevens: Perhaps. That will be decided by much debate, I suppose. Manufacturing industry in Canada is not one that as a person, if I had my option, I would invest in myself today.

Senator Cook: Whether it is a manufacturing industry or not, the taxpayer involved would have a right of appeal, would he not?

Mr. Stevens: Yes, but that is a different act.

Senator Cook: I know it is a different act. I am relating it to any appeal under this bill.

Mr. Stevens: I agree. I think the question of appeal, so that the minister should make known his reasons, so they can be debated or appealed, is a very important part.

Senator Flynn: I was wondering whether the foreign control of a manufacturing industry means the same thing as foreign control of the resources of the country. Is it more dangerous for the economy or wellbeing of Canadians to have their resources under foreign control rather than the manufacturing industry?

The Chairman: Following that, may I ask this question, Mr. Stevens. If I were a non-eligible person and decided I wanted to invest in a laundry and dry cleaning business in Stratford, the area for recovery would have some minor limitation, but it would be the establishment of a new business by non-eligible persons. Do you think a provision that goes that far in those circumstances is practical?

Mr. Stevens: I think it would come under the heading that it would not be to the detriment of Canada.

The Chairman: Maybe you will say it would be of significant benefit to Canada to keep the people cleaner.

Mr. Stevens: It would certainly not be any detriment. If I may answer Senator Flynn's question about resource industry, I think Canada has grown to its present standard of living to a great degree by relying on its primary industries. By its primary industries I mean its resource industries, agriculture, and the things Canada did well while it was growing to its present size. I think it would be very bad for Canada to suddenly try to stop that development. You cannot wrench the economy, you

cannot change things quickly without great strains. For a long time to come I personally would be very loath to see any kind of legislation that would stop our growth, because a lot of manufacturing and service industries grow out of the resource industries. We need the resource industries as well. We need all industries in order to create these jobs that we are having a difficult time creating.

Senator Burchill: I would like to ask Mr. Bruce if I understood him correctly to say that the money that his company generates here in Canada could and might be used for the establishment of new industries, whether related or unrelated, but that he questions very much whether there would be any further investment from the United States. Did I understand you correctly, Mr. Bruce, in saying that?

Mr. Bruce: I think you could take it that what I meant to say was this, that there is no tendency on our part to reduce capital expenditure in this country, but this of course, is arising out of the capital we have generated here. I was suggesting that in this climate new capital from abroad flowing into us was unlikely.

Senator Burchill: Mr. Stevens mentioned that point too—that his company was investing in other countries rather than in Canada. Did I understand you to say that, Mr. Stevens?

Mr. Stevens: Well, we are investing in other countries as well as in Canada. It so happens that my company is so big in our industry that I think the Minister of Justice would be after me for having too much Canadian industry if we expanded more than we did. So, we are expanding to meet the conditions in Canada, and we are also expanding abroad in order to create the base from which we can develop technology in Canada, because we get technology payments from our overseas affiliates which go into the facilities here in Canada which generate the technology, and on the pure Canadian base in my industry, in which there are probably ten world giants, we are getting to the stage of being a normal-size man compared with those giants. We are having to generate the technology here, and we get that by making investments abroad and spreading the research and development base.

The Chairman: I understood you to say earlier that your company does not fall under the description of a non-eligible person.

Mr. Stevens: Yes, but I did not want to leave the implication that my company was investing money abroad which would otherwise be invested in Canada. That was the point.

Senator Burchill: That is the point I was making. It is not because of any aversion to the climate in Canada that you refrain from investing in Canada.

Mr. Stevens: No, but if I had the opportunity from scratch today as an outside investor, I would not of necessity invest, except in special circumstances, in the

secondary manufacturing industry in Canada. I say that because the climate, the market and the conditions that we have are not such that you can make as big a return on your investment in Canada as you can in the United States or even in certain European countries.

Senator Burchill: I think that is a very important point, Mr. Chairman.

Senator Buckwold: Getting back to the original statement regarding "significant benefit" or "adverse effects," I am concerned personally about the use in the act of the word "significant". Would you, as an association, be prepared to accept the word "benefit" without the adjective "significant"? In other words, either it is a benefit or it is not a benefit. I presume a benefit is something that is not adverse. I just want to get your reaction to the elimination of the word "significant".

Mr. Stevens: Well, Mr. Chairman, I would agree that we would be happier with "benefit" rather than "significant benefit". Taking the chairman's example of an outsider coming in to set up, say, a laundry business, I cannot see that as being detrimental to Canada. It would be a benefit and would create employment.

The Chairman: But would it be a significant benefit?

Mr. Stevens: You might say that removing "significant" would be of a benefit in that case.

Senator Buckwold: Would you accept the word "benefit" without "significant" or any other adjective, rather than insist on "detrimental"?

Mr. Stevens: No adverse effects.

The Chairman: I thought, senator, that you rationalized "no adverse effects" and came to the conclusion that you would be worse off if there was "no adverse effect" instead of "significant benefit".

Senator Buckwold: I quite agree, and we may have to accept that point yet. As I say, the word "significant" worries me as much as anything else in this whole bill.

Mr. Bruce: I think the point is that what we are proposing, or what we are seeking, would put the onus on the government; and I think that your change from "significant benefit" to "benefit" would not do this.

Senator Buckwold: You would still want the onus on the government rather than on industry?

Mr. Stevens: Yes, to prove that it is adverse. What we wanted to do, really, was to put the onus on the government to prove that was going on was adverse.

Mr. Bruce: This was our rearguard action in pursuit of freedom.

Mr. Stevens: I think, to be more precise, we would be happier with "benefit" rather than "significant benefit", but we would be happier still with "adverse" because then the government would have to show, on review, and the onus would be on them to prove this.

Senator Buckwold: But the chairman has already proved that "adverse effect" would be as difficult to define as anything else.

The Chairman: That would be too much the other way. I was suggesting that maybe the word "possible" could be used or "capable of being of benefit".

Senator Buckwold: I would think the committee would have to look into the word "significant" very carefully.

Senator Beaubien: But should we not put the onus on the government to prove that it either is a benefit or is not a benefit?

The Chairman: Then you would simply say "benefit".

Senator Flynn: With "benefit" I do not think you could go far enough to put the onus on the government. I like the principle that it would be up to the government to establish that the take-over would be detrimental to the Canadian economy.

The Chairman: Remember, under the wording of the factors that must guide the minister, these factors are exclusive, so then you want to give the government the right to interpret those factors by regulation. That would be an impossible idea.

Senator Flynn: But we have already established that what is wrong with the bill also is the discretion that these vague words give to the minister.

The Chairman: If you look at some of the general language in the factors...

Senator Flynn: You don't know what is going to come out. This is the big problem, I think, as far as foreign investment in Canada would be concerned if we enact the bill, because we don't know in advance whether they are going to meet the criteria of the minister.

The Chairman: Would you agree if we took out the word "significant"?

Senator Flynn: That would be better, but I am not sure it would be sufficient.

The Chairman: Sufficient for whom?

Senator Flynn: For the purpose we have in mind—not to create a climate of uncertainty as far as the policy of the government is concerned.

The Chairman: Are there any other questions? Would any of your other representatives here care to comment?

Mr. Stevens: Mr. Chairman, there was one point I made in my early remarks concerning small businesses, and we have a representative here of the kind of business that we are talking about. The real yeast from which we draw our strength, and from which we draw new big businesses, comes from small businesses, and the entrepreneur in Canada has got to be supported. We have had a lot of actions in the recent past which have had rather an adverse effect on the entrepreneur.

In Mr. Beach, here, we have a Canadian owner of a small business who has reached that certain age when he wants to look after the disposition of his estate. He is also faced with the fact that he is so successful that he cannot supply his market. He has expanded his business

in the past, and now he is going to be put in a strait-jacket if he invests the million to million and a half dollars that he has got to invest to expand his business, that if he does not live for the next five years he is going to be depriving his family of the benefits of what he has gained. I would like Mr. Beach to come up here and answer any questions on the subject.

The Chairman: Mr. Stevens has given the introduction. Mr. Beach is president of Beach Industries Limited.

Senator Buckwold: What kind of business is Beach Industries in?

Mr. R. J. Beach, President, Beach Industries Limited; and Chairman, Membership Committee, Canadian Manufacturers Association: We manufacture sheet metal products like tool boxes and chests, cabinets.

Senator Buckwold: Where are you located?

Mr. Beach: Smiths Falls, and we have about 200 employees. Our sales are around \$4 million, and we have a capital investment of a little over a million dollars.

Senator Buckwold: The implication that we would get from Mr. Stevens' introduction of you is that you have a problem. You want to expand and you should live to a hundred years, but if anything happens to you there could be problems with your estate as the result of this new investment situation.

Mr. Beach: That is right.

Senator Buckwold: The implication is that the only people who could possibly take you over would be a foreign corporation.

Mr. Beach: Exactly.

Senator Buckwold: Is there a Canadian operation or is there Canadian capital that would be interested in your profitable business?

Mr. Beach: We have had some discussions, some approaches from Canadian companies or syndicates for takeover and so on, but there is no comparison with what we feel we could realize, and we have had a couple of serious approaches. I would like to make perfectly clear that the sale of my business comes just about at the same level of my priorities as selling my wife. That is not a very good simile, but we did not create this business to sell it.

Senator Buckwold: I realize that.

Mr. Beach: The business was always a means to an end. I have always figured that it was going to provide me with a real good living and something I could hand on to my son-in-law and my grandson. Now I am faced with real problems on the estate. I hope that you will not object to my being sort of specific in this regard. The only reason I talk this way and the only reason I talked about it in CMA is that in CMA we have 8,500 members, and over 6,500 of them have less than 100 employees. So I figure that there are a lot of Russ Beaches in that 6,500

members, and that ratio applies all the way through Canadian industry. This is what has bugged me always in my work with CMA that somehow or other small business is either ignored or forgotten by the public and by the government, or else they are put in same category as David Lewis' "fat cats". I just do not figure that they are in that category. I figure that every business in Canada was once a small business. Mr. McLaughlin once made buggies, maybe whips, so every business has had its start. Unfortunately our present atmosphere is that when we think of business we just think of "fat cats".

The Chairman: It is a good job he got into making cars in time, then.

Mr. Beach: I feel that to ignore the problems of the individuals in small businesses is to sort of figure: "Well, we've got lots of oak trees and we don't need any more oak seeds."

Senator Buckwold: Let us get back to the fundamentals again. You are only here really as a symbol...

Mr. Beach: Exactly.

Senator Buckwold: Of a lot of the really basic industrial complex of Canada, the 6,500 members of the Canadian Manufacturers Association who are in fact employing less than a hundred people and are relatively small manufacturers. We are not really into your business, but I am going back to the problem of why, then, the difference between the foreign takeover of your business and a Canadian takeover. I would like to know why the Canadian takeover of a group who would like to move into your business, or a Canadian company that would want to expand, would be that much different than a foreign corporation.

The Chairman: He said it would produce as much money.

Senator Buckwold: I want to know why. Why would not one of your Canadian competitors be as interested in your company as a foreign company?

Mr. Beach: In the first place, as with everything in the States, there is ten times the market for a product or a plant.

Senator Buckwold: But you are selling in Canada.

Mr. Beach: In the second place, in the States we can be taken over advantageously by several box manufacturers, people who are in the same line of business as we are and who are anxious to get into Canada, who used to be in Canada up until we competitively forced them out. We now, by far, have the leadership in our line of business in Canada, so nobody is interested in taking us over, except somebody who has been looking at a financial success story and wants to add it to their portfolio. They are not looking to get into the box business, to improve our box business and to grow in the box business.

Senator Buckwold: Why wouldn't the Canadian investor be interested in such a profitable company?

Mr. Beach: I think that some of them are—that is, some of the approaches we have had are simply from a monetary point of view, a financial point of view.

Senator Laing: Would the American buyer have a tax advantage in his jurisdiction that would be denied the Canadian purchaser?

Mr. Beach: I am not able to say whether he would have an advantage or not, but we do know from the kind of negotiations—very preliminary, although we have one now who has sort of been talking to us and waiting to see the results of this kind of deliberation—we are quite satisfied from some of the negotiations that we have had that we could get a substantially larger amount of money from the buyers who have indicated an interest in our company in the States, than we could in Canada. In Canada we have had three or four approaches that have been more on the basis of exchanging stock and really turning it over to them so that they can buy it from me with my money. In the States six months ago we could have completed a clean, cash deal for a million dollars more than what our business is really worth.

The Chairman: Senator Laing: there may be something in the question that you put as to the American purchaser perhaps having a tax advantage that would not be open to a Canadian purchaser. It is possible.

Senator Cook: We should correct that.

Senator Laing: It is possible. I have had claims made by people very much in the same category as Mr. Beach, that this is the case, that there is a tax advantage in their jurisdiction to the American buyer as against a Canadian buyer. This is so, is it?

The Chairman: I am just listening to what the witness is saying. I think it is possible, yes.

Senator Laing: Under certain circumstances.

Senator Molson: I think Mr. Beach has also indicated that by creating jobs for American purchasers you have eliminated a good many possible candidates for an investment in his business, and that automatically drops the possible price.

Mr. Beach: I would like to make it pretty clear, though, that I am not looking for somebody to buy my business. I am faced right now with a major expansion that I dare not undertake, because if we cannot digest it within the next five years my family will lose the business. There is no way they could cope with the shock of either the capital gains tax or the succession duties. Our estate advisers tell me that if I am going to die, now is the best time to do it!

Senator Molson: That time comes to us all sooner or later.

Mr. Stevens: Mr. Chairman, I can quote to you a case in our industry identical to that of Mr. Beach's. About 15 years ago a competitor of ours, who was Canadian-owned, wanted to sell his business and being a good

Canadian he offered it to us. We had a look at it and we made him an offer, of \$2 million, I think, for the business. On the basis of the assets that he had, that was all it was really worth to us. He eventually sold it to an American interest for something in excess of \$5 million, because they had a different idea of the market. At any rate, for whatever reasons, there was a much bigger market for his business to sell it abroad. The business did not do very well because the Americans, admittedly, paid too much for it. After 11 or 12 years they in turn sold it to some other non-Canadians who now have it, but at a reduced amount, and the thing has worked out. But that man had a problem: should he take \$2 million or \$5 million?

Senator Beaubien: That's quite a problem!

Mr. Stevens: And yet we have this legislation forcing people into that problem.

Our company had a second opportunity to buy a Canadian competitor, which we took. We paid the Canadian competitor 25 per cent more than we thought the business was worth and he compromised, because he could have sold it for more; but he apparently felt that he should do it. But there are very few people who will sell their business for \$2½ million when they know they can get \$3½ million.

Mr. Beach's is an example of one of the problems which, in addition to all the other legislation, the capital gains tax, for example, is forcing on small businessmen like Mr. Beach. They do not have the resources to have armies of lawyers, income tax accountants and so on working out the best way for them to handle those businesses.

The Chairman: I am glad there are some of them who do!

Senator Buckwold: Just to carry that on, let us say you were ready to sell and an American company was prepared to take you over, how would this particular act affect that adversely? Could it not be proved that there were benefits to the country for this particular takeover, other than that the thing would just wind down? I am wondering, carrying it further, what you would describe as the adverse effects of the act in its application in this case.

Mr. Beach: Well, senator, the business acumen and the ability to make a decision in the business area on the part of civil servants and politicians comes pretty low on my list. I just don't think they know what motivates people. I don't think they know what makes them tick, and I don't think they understand the problems. I think that most of the time the decisions they make are wrong.

Mr. Stevens: You mean business decisions?

Mr. Beach: Oh, yes, business decisions. Mind you, I want to be very clear on that.

Senator Flynn: That covers quite a field of decisions made by politicians.

Senator Buckwold: In other words, the people in your company would not qualify for the "significant benefit" factor in this particular case, keeping in mind all the other exclusive requirements.

The Chairman: Well, he is doing so well that the story must be, "What assurance have you that the other people coming in could do as well?"

Senator Molson: There is the uncertainty, Mr. Chairman.

Senator Flynn: The point made by Mr. Beach is, I think, that this act will restrict the market for the sale of small Canadian businesses. That is the point that is being made.

Senator Beaubien: That is right. That is the point.

Mr. Beach: It makes any Canadian market a buyers' market, because the Americans are ...

Senator Cook: They are excluded.

Mr. Beach: Even if they are not excluded they are discouraged; they are frightened off.

Senator Cook: Bear in mind that if he gets a beneficial rule this time and a non-eligible person buys it and comes to sell it, he then has to go through it all over again and there is no proof that he is going to get the same rule the second time.

The Chairman: Thank you very much, Mr. Beach.

Are there any other members of your group who wish to contribute, Mr. Stevens?

Mr. Stevens: Yes. Mr. Becket.

The Chairman: Mr. Becket represents the Canadian International Paper Company.

Mr. R. W. Becket, O.C., Vice-president, Secretary and General Counsel, Canadian International Paper Company: Mr. Chairman, I was particularly interested in a number of the comments made by senators, and in one or two areas where they kept coming back to particular points and trying to get a clear understanding from our representatives. I wondered if I could just go back to one or two of those.

I think, on the point of possible separation of the test of "significant benefit" between takeovers and the establishment of new businesses, the suggestion that came out is an excellent one and should receive very serious consideration.

There is an entirely different area here. The effects can be entirely different. You have a very different situation between takeovers and the establishment of new businesses. This is particularly true where you are dealing with foreign-owned corporations which have been in the country for many years and which have—and I use this word advisedly—plowed back almost all of their earnings into their companies, which have expanded and which, in their view and in the view of others, have been good citizens.

I am thinking of one particular instance in which the company has been in the country for over half a century;

where its investment in plant and equipment has in the past 20 years quadrupled—and I am talking about many hundreds of millions of dollars; where their total tax payments have been many hundreds of millions of dollars in the last 20 years; and where their dividends to their parent—and they are wholly-owned—have been less than 10 per cent of these figures over 20 years.

Now, the unfair area is that, despite the fact that it has expanded mostly in related industries, but sometimes in marginal to being related, though possibly not unrelated, suddenly—particularly when you realize that, my illustration being in the pulp and paper industry, the basic composition of that industry is Canadian and that there are only three or four foreign-owned companies—suddenly that company, many years in the country, has to be reviewed and screened with respect to everything it wants to do in the future.

So I go back to the suggestion made by the senators for consideration that maybe the test should be different and there should be a separation of the approach.

Another point I would like to refer to for a minute is this. There was also the suggestion, or close to it, that perhaps there should be a differentiation between the types of industry involved, resource and manufacturing. You do get marginal industries, such as the one I referred to, pulp and paper, where it is partly resource and partly manufacturing. Nevertheless, I think serious consideration should be given to putting a differentiation into the bill.

Reference was made to the provinces and the effect on the provinces. The factors on the significant aspect—I think it was the last one—make a direct reference to the economic interests and benefit of Canada, referred to as the government, and the provinces. I suggest that you have right there a statutory area of conflict. It may well be difficult to put the two together.

Finally, a remark was made by our representatives here to the effect that this could lead to fragmentation. I believe this is true. Obviously anybody seriously considering additional investment who is in the ineligible category will look at the provincial situation as well as the federal, and he is likely to look at it first; he is likely to seek for provincial support before he makes his federal approach. You may well have further causes for open conflict, if I can use that expression, between particular provincial interests and the federal.

Senator Desruisseaux: How many provinces would now disagree with this foreign investment bill, would you say?

Mr. Becket: I would not have any idea. To answer that would be a pure guess, but I would think several.

Senator Desruisseaux: Would you say that last fall Prime Minister Davis made reference to foreign investment along these lines?

Mr. Becket: If I read the papers correctly, I would say, yes, sir.

Senator Desruisseaux: Would you say that Prime Minister Hatfield, yesterday or the day before, made a statement against it?

Mr. Becket: I have not read the clipping, but the information given a moment or two ago certainly indicates that.

Senator Desruisseaux: He underlined the constitutional aspects of it.

Mr. Becket: That is right sir.

Senator Desruisseaux: There is no doubt about the position of the Province of Quebec and their thinking at the present time, from what I have read.

Mr. Becket: I would not want to comment on that.

Senator Desruisseaux: There are others.

Senator Molson: I think Mr. Becket referred to the Government of Canada or the provinces in reference to clause 2(2). Our reading of that was that the wording meant the government or legislature of any province. The "government" is the provincial government or the provincial legislature.

Mr. Becket: You are quite right, senator.

Senator Molson: I think you were referring to it as the Government of Canada.

Mr. Becket: You are quite right, but in the criteria generally the benefits and interests of Canada are in other clauses. You are quite right; the conflict is not in that subsection.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: If I may intervene, it does say in that clause "compatibility... with national industrial and economic policies," so I think the conflict, if any, is even greater.

The Chairman: There is a conflict; there is no doubt about it.

Senator Buckwold: Again being the devil's advocate, may I say that our provincial problems are very real ones. I, by the way, come from Saskatchewan, from the West where we have provincial governments who, I think, philosophically support this bill, but if it ever came to your industry wanting to put a plant into our province I am sure they would bend over backwards to make sure that you got in there; this is one of the conflicts that the N.D.P. governments will have in the provinces of Saskatchewan, Manitoba and British Columbia, and I can foresee some very major problems in that way. On the one hand they do not want foreign investment; on the other hand they are begging for it to come into their rather undeveloped regions.

Carrying this further, would you not feel that this type of legislation might be a means to reduce regional disparity? In other words, an industry that was not desirable in Ontario because there is lots of competition in Ontario, and the government really did not go out to support it there, would in Saskatchewan be welcomed with open arms. As a result, some of the regions of Canada might be able to attract industry, which they are desperately anxious to get, which otherwise would not go there.

The Chairman: You would be buying a law suit if an industry is directed to Saskatchewan that might ordinarily go to Ontario and a government decision directs that.

Senator Buckwold: I am not referring to a government decision. Let us say they decide they would like to go into Ontario but it really was not that important to Ontario, and for some reason they managed to get into Saskatchewan; they looked at the potential and said, "Let's go here," and the provincial government got behind it and went all out to get that industry there. As you know, some of the poorer provinces would do that, even with a relatively small industry. I am saying it could happen that an industry that possibly could not locate in Ontario could locate in Saskatchewan.

Senator Flynn: Under this legislation?

Senator Buckwold: You do not think that would be possible under this legislation?

Senator Flynn: You must apply different standards.

Mr. Becket: My point is that conflict can arise there. After all, the agency and then the minister make the recommendation, the government makes the decision, and it is the federal government.

Senator Buckwold: It keeps in mind provincial considerations.

Mr. Becket: That is an assumption.

Senator Flynn: You are suggesting that the minister would say "yes" if it is in Saskatchewan, and "no" if it is Ontario?

Senator Buckwold: Yes, that is what I am suggesting.

Senator Flynn: It is even worse than we thought.

Senator Beaubien: Is that possible?

Senator Buckwold: I want to make it very clear: I think this is one of the reasons they have got this in the bill.

The Chairman: Under this provision referring to the provinces, one of the decisions the minister has to make is compatibility as between the national industrial and economic policies and the economic and industrial policy objectives enunciated by a province, and how that is likely to be significantly affected by the acquisition. This deals only with acquisition, not the establishment of a new business, as I understand it.

Senator Cook: Or establishment.

The Chairman: Yes.

Senator Buckwold: I am not trying to disagree with our very learned chairman. I suggest there will be provinces with a relatively small industry that really would not go to bat for that industry, whereas the have-not provinces would knock themselves out to do so. There would be this kind of pressure on the minister to say, "It's okay for Saskatchewan, but it may not be okay for Ontario." I think that is a real possibility.

The Chairman: I think the bill would be neutral on that, would it not?

Senator Buckwold: It would leave that direction open. That is what I am saying. If you were looking at a plan now to go to Saskatchewan, another pulp mill—which I do not think is very realistic under the present government there, which has just turned one down—if you wanted to go there would you be inclined to do that as against an expansion that you might prefer in Ontario or Quebec?

Mr. Becket: I think the answer is no, or certainly doubtful. You have to weigh so many things that you cannot take it out of context and say you would make the decision for those reasons. I am not trying to duck the question, but I really cannot answer it specifically.

The Chairman: Senator Buckwold, I am wondering whether the substance of your question is that the federal authority might under this bill be in a position where it could direct.

Senator Buckwold: That is exactly the point I am making.

The Chairman: Then we are faced with the issue whether we should give them that kind of authority.

Senator Buckwold: I was not getting into that aspect. I said there is the possibility, and in the eyes of some people it might be considered advantageous from the point of view of the have-not areas that you could direct industry.

The Chairman: You mean advantageous for the government to have that authority?

Senator Buckwold: No, advantageous to those areas.

The Chairman: Are there any other questions?

Senator Burchill: I just want Mr. Becket to know that as a citizen of New Brunswick I realize the importance of everything he has said, and I agree with him wholeheartedly.

Mr. Becket: Thank you.

Senator Burchill: I know what your company has done and is doing down there.

Senator Laing: Mr. Becket is the first representative of the resource people, I would think. Is it not a fact that because of the jurisdictional position of resources the overwhelming consideration of any firm will be provincial rather than federal?

Mr. Becket: That is a very complete statement in itself, and the word "overwhelming" rings through it. It is certainly a very important consideration because many of those resources are provincially owned, and this is particularly true of the forests. I do not want to speak of the petroleum industry because I do not know.

The Chairman: Have you any other members with you you would like us to hear, Mr. Stevens?

Mr. Stevens: No, thank you.

The Chairman: Then, I think we shall express our appreciation to Mr. Stevens and the members of his delegation for the assistance and help they have given us here today. I want to thank you all very much.

The committee adjourned.



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FIRST SESSION—TWENTY-NINTH PARLIAMENT

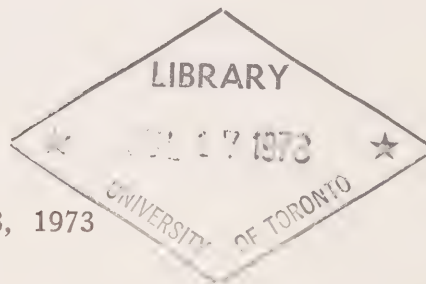
1973

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

Issue No. 9

WEDNESDAY, JUNE 13, 1973



Third Proceedings on Bill S-4 Intituled:

“An Act to amend the National Parks Act”.

(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Tuesday, May 22nd, 1973:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Laing, P.C., seconded by the Honourable Senator Connolly, P.C., for the second reading of the Bill S-4, intituled: "An Act to amend the National Parks Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Laing, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, June 13, 1973

(9)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 2.30 p.m. to examine the following Bill:

Bill S-4 "An Act to amend the National Parks Act".

Present: The Honourable Senators Beaubien, Burchill, Cook, Desruisseaux, Flynn, Laing, Macnaughton, Martin, Molson, Smith and Walker. (11)

It was proposed by Senator Connolly (*Ottawa West*) and *Resolved* that Senator Macnaughton be the Acting Chairman of the Committee for this meeting.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Mr. William J. Worrall

Indian and Northern Affairs Department:

Mr. J. Nicol,
Director General, Parks Canada;
Mr. C. B. Yates,
Liaison Officer,
Financial Services.

Yukon Chamber of Mines:

Mr. M. P. Phillips, President.

Whitehorse Chamber of Commerce:

Mr. J. D. Gillies,
First Vice-President;
Mr. G. J. Smith, Member.

A number of proposed amendments were submitted to Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel for his opinion.

At 5.05 p.m. the Committee adjourned until 9.30 a.m., Thursday, June 14, 1973.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, June 13, 1973

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-4, to amend the National Parks Act, met this day at 2.30 p.m. to give further consideration to the bill.

Senator Alan Macnaughton (*Acting Chairman*) in the Chair.

The Acting Chairman: Gentlemen, I hope I impress you with my documentation, which is rather scanty.

This afternoon we continue discussion of Bill S-4, an Act to amend the National Parks Act, and we have several witnesses here from the Department of Indian and Northern Affairs and—is Mr. Worrall here?

Mr. William J. Worrall: Yes, Mr. Chairman.

The Acting Chairman: Mr. Worrall is from Vancouver, I understand.

Mr. Worrall: Correct, sir.

The Acting Chairman: And he wanted to be here. I believe Senator Connolly arranged that he be heard.

Senator Connolly: Yes, that is so.

The Acting Chairman: Then we have witnesses from the Whitehorse Chamber of Commerce and the Yukon Chamber of Mines.

With your consent, gentlemen, I thought we would proceed with Mr. Worrall, who has come a long distance, and then work through the other chambers of commerce and witnesses.

Mr. Worrall, would you come up here, please? The Clerk has certain documentation to distribute, which I presume he will do.

Mr. Worrall: Thank you, Mr. Chairman.

The Acting Chairman: Mr. Worrall, I said you come from Vancouver. Would you tell us what you do?

Mr. Worrall: Yes, Mr. Chairman. I am a barrister and solicitor in British Columbia, representing, so far as this meeting is concerned, a company called Alvija Mines Limited which, together with Morwaine Gold Mines, hold a property which, if you look at exhibit 1 on the map which I distributed, is a property just inside the boundary or proposed boundary of the Kluane Park.

The purpose of my coming before you gentlemen is to request that consideration be given to moving the bound-

aries so as to permit mining operations to be conducted on that property.

The problem arises from the fact that the Parks Branch has approached my client indicating that being within the park boundaries it would be necessary that some settlement be arranged to take over their mining property. No firm discussions have been concluded as to the basis on which we could proceed to arrive at the settlement.

It did appear to me that, being that close to the boundary, some due consideration might be given to moving it. It will be noted this is a placer gold property, and I have supplied to you a report and supplemental report of the professional engineer practising in British Columbia, Mr. Andrew Allan. Unfortunately, I had hoped Mr. Allan would be able to be with me, but he was not available, so that I will do my best to answer any questions I can arising out of the report.

It will be seen from looking at the report that not that much testing has been done on the property, but is is the recommendation of Mr. Andrew Allan, particularly considering the increase in gold prices, that rather than proceeding with further testing, mining operations be commenced.

Now, Alvija is in this position that it had commenced a public financing on the Vancouver Stock Exchange at the time at which we received notification from the Parks Branch that they wished to expropriate the property. So they are now half way between two stools, as to whether to carry out the operations or whether they can carry out the operations. Indeed, the investing public in Vancouver is aware because we were forced to put out a notification by law, indicating that the Parks Branch had given us notification. The estimates from the engineer—

Senator Connolly: Mr. Worrall, may I just ask you: Apart from submitting the plan that we have before us here, you have no written submission, I take it, and it is going to be oral, is it?

Mr. Worrall: Aside from the report which is submitted to you, which is the engineer's report.

Senator Connolly: Do we have that report? Thank you.

Mr. Worrall: That submission itself consists, as I indicated earlier, of a report of Andrew Allan done in August, 1972, supplemented by the further report of March, 1973, to which are attached three maps. The first map, which is exhibit 1, is the map supplied by the Parks Branch indicating the location of the property. The second is a schematic.

Senator Connolly: Is it marked as exhibit 1? Is that the document you are talking about?

Mr. Worrall: That is correct. You should have a "1" on it. "1" is in the corner.

Senator Connolly: Yes, I see now, the right-hand corner.

Mr. Worrall: That was a map supplied by the Parks Branch, showing the location of the property.

The Acting Chairman: Would you file that as exhibit B-1?

Mr. Worrall: I would ask that it be filed, yes.

Senator Connolly: And the portion marked in red in the upper left-hand corner is the mining property in question?

Mr. Worrall: That is correct.

The Acting Chairman: Would you summarize your brief very quickly? Are there any other points that you wish to bring to the attention of the committee?

Mr. Worrall: I could do it very shortly, Mr. Chairman, by indicating that the problem, as I see it, is a simple one, in that if the Crown federal, in order to acquire this property, as they would have to do, would have to expropriate, it seems to me, on the basis of the information which we have, that the cost might be in the range of \$12 million to \$18 million. This seems a very high price to pay if the border can be moved without harm to the property which would consist of the Kluane Park. It would be noted from the topography that the river which would be used to sustain these operations runs out of the park. You will not from the report of Andrew Allan, on the question of the use of the water, that there will be no pollution involved so far as the Donjek River is concerned. All that would get into that river would be clean gravel, and there is no large boulder problem, so that it seems to me that this operation could be allowed to continue without harming the concept of the Kluane Park, merely by moving that border. If the border stays where it is, we have the problem of trying to arrive at some equitable compensation to those people who hold the property.

The Acting Chairman: What is the legal status of your mining company at the present time?

Mr. Worrall: It holds an option from Moraine Gold and from the owner of four claims in the area which are areas surrounded in red.

The Acting Chairman: Are you an incorporated company?

Mr. Worrall: Yes, we are.

The Acting Chairman: In B.C.?

Mr. Worrall: A B.C. corporation, listed on the Vancouver Stock Exchange.

The Acting Chairman: How many shareholders do you have?

Mr. Worrall: I would say we have around 300.

The Acting Chairman: What is your capitalization?

Mr. Worrall: The capitalization of the company is 5 million shares, of which 1,900,000 are presently issued.

Senator Laing: For what consideration?

Mr. Worrall: Varying considerations, sir. There were 750,000 which were vendor consideration, which shares have since been sold, if my memory serves me correctly, at 25 cents.

This present offering which they are making was the "best efforts" offering which, under the rules of the Vancouver Stock Exchange, is an offering which has no set price. It has a down side limit of 15 cents.

Senator Walker: How much do you have in the treasury?

Mr. Worrall: I cannot answer that.

Senator Walker: Approximately.

Mr. Worrall: I would say the treasury, probably about \$25,000 at the present time.

Senator Burchill: You mean shares in the treasury?

Senator Walker: No.

The Acting Chairman: Cash.

Senator Laing: Have you a balance sheet of the company?

Mr. Worrall: I have one as of the past period.

Senator Laing: Will you file it, please?

Senator Walker: What does that show?

Mr. Worrall: The balance sheet at that time indicated that cash was very low. At this particular time it was March 31, prior to when they started their financing, and they only had \$10 in the treasury at that point. I am prepared to supply the balance sheet which indicates total assets of \$423,000. As I say, the cash position was very low.

Senator Walker: Let us bring this down to hard facts. Just what are you asking for and why are you entitled to it, why are you coming here?

Mr. Worrall: I am asking that the border proposed for the Kluane Park be moved.

Senator Walker: Why would we move it?

Mr. Worrall: To allow this mining operation to continue.

Senator Walker: Is that usual out your way, to move national parks to allow a mining operation to continue? Has it been done before?

Mr. Worrall: I am unaware of any precedents where it has been done before.

Senator Walker: Then why should we do this for you? We are glad to see you and all that, but why?

Mr. Worrall: You ask where there is a precedent for it. There are all sorts of precedents for applications being made, and in some cases being granted, to allow mining to carry on within a park. That problem normally arises because you do not have the chance to come before any body to make representations as to where the border of the park should be.

In this particular case it is my understanding that there have already been some submissions made and some changes made in the border as the result of operations which are being conducted. I am merely asking for continuation of exactly that.

Senator Walker: How far in your operations are you? What have you done so far?

Mr. Worrall: There has been about \$25,000 worth of testing done.

Senator Walker: That is just surface.

Mr. Worrall: I appreciate that, but you also have to understand gold operations of a class or nature. What is being suggested in this particular case is that we continue with Keystone or churn drilling. It is recommended that considering the price of gold at the present time there is no need to continue churn drilling. You get the same thing by starting production and getting income while you are doing it, instead of merely doing churn drilling.

The Acting Chairman: Will you file a copy of your balance sheet? We can have it photostatted here if you wish.

Mr. Worrall: They form part of the statement of material facts which I am filing.

The Acting Chairman: To whom have you spoken already?

Mr. Worrall: I was approached by Mr. Rolfson and also by Mr. Needham of the minister's department. We did have certain discussions on the basis of which the valuation of a property they wanted to take over would be done. Basically, that broke down into four alternatives. One was a compensation for expenses to date, with compensation for loss of property and a bonus for giving up the property. We did not continue with any lengthy discussions as to how the bonus would be calculated or, indeed, how we are going to calculate the loss of property.

The second alternative was to have a completely independent evaluation of the property done based on the work to date. The third alternative was that we would do further test work and then complete an independent evaluation. The problem with that is we then have to negotiate with the Parks Branch as to what work will be allowed. Apparently they do not wish to allow any bulldozer work on the property, which we wanted to do, nor will they allow any sluicing. Both those things we consider essential to evaluate the property. The fourth alternative, which was not really stated as an alternative, was that we

merely continue with the work until we are stopped. That was the result of the discussions.

Senator Walker: What are they supporting today? Are those officials of the department supporting your application?

Mr. Worrall: They have taken no position so far as that is concerned. It would be outside their jurisdiction.

Senator Flynn: They have only discussed the terms of acquiring title to your property?

Mr. Worrall: On a very preliminary basis, senator, yes.

Senator Laing: What is the acreage involved in your claims?

Mr. Worrall: You are looking at under 1,000 acres. There are only four claims involved and two of them are not full-sized claims, senator.

Senator Laing: Is this property on the outer edge of the park, the very edge, or is it inside?

Mr. Worrall: The indication from the Parks Branch is that we are on the edge.

Senator Laing: In other words, part of your claim is a border of the park, the outer border of the park.

Mr. Worrall: It is hard to say on such a small-scale map, really, Senator Laing. There may be a survey. I am not aware of it. Certainly, on the map supplied by them it would appear to be right on the border.

Senator Connolly: Are you referring to this small map, Mr. Worrall, marked exhibit No. 1?

Mr. Worrall: Yes. It is the only map I have been supplied with.

Senator Connolly: All we can see on this map is the area involved in these claims.

Mr. Worrall: That would show the general location.

Senator Connolly: We do not know where in respect of that the park is supposed to be established. do we?

Mr. Worrall: I am not aware whether there has been an actual survey done of that park border.

Senator Walker: Then how do you know that part of your property is going to be involved?

Mr. Worrall: By information supplied by the Parks Branch themselves.

Senator Walker: Do we have anything in front of us to indicate that?

Mr. Worrall: That is their map, senator.

Senator Walker: This map does not indicate very much, does it?

Mr. Worrall: No, it does not.

Senator Flynn: Would your property be the one circled in red?

Mr. Worrall: Yes, and that was how they supplied the map to us.

Senator Flynn: Where would you say the present boundary of the park is? Is it the dotted line or the straight line?

Mr. Worrall: On that particular map it shows the dotted line as the proposed boundary of the park.

Senator Flynn: The proposed boundary would be the dotted line?

Mr. Worrall: That is correct.

Senator Flynn: What is the straight line?

Mr. Worrall: That is the Alaska border, I believe.

Senator Flynn: Where is the actual boundary of the park? Does it show it on this map?

Mr. Worrall: That is their boundary, senator. It is the dotted line.

Senator Flynn: It is a new park entirely?

Mr. Worrall: That is correct.

Senator Walker: According to this map, the park does not seem to encroach on your property at all. It goes along the edge of it.

Mr. Worrall: Actually, senator, we are right inside the park.

Senator Walker: Oh, yes, I see.

Senator Connolly: Is there a metes and bounds survey of your property available?

Mr. Worrall: No, there is not, senator. We could do one, but the thing is we have no idea exactly where they have located this proposed boundary. The first indication we had of it was when the Parks Branch themselves sent us this map—which is why I supplied this map to you—saying, "You are within the proposed boundaries. Accordingly, we wish to meet with you to discuss compensation."

Senator Flynn: Your discussions up to now have indicated what kind of figures?

Mr. Worrall: No figures have been discussed. It has been very preliminary.

Senator Flynn: Have you any idea of what it would lead to?

Mr. Worrall: No, I do not.

Senator Flynn: Are we speaking of millions of dollars, or what?

Mr. Worrall: Well, on the work which has been done to date the engineer estimated that the value they had determined so far was \$18 million.

Senator Flynn: So \$18 million would be your demand, would it?

Mr. Worrall: That would certainly be our starting position.

Senator Walker: Which way?

Senator Flynn: Where would you end?

The Acting Chairman: Have you had any meetings with the Parks people?

Mr. Worrall: Just the one preliminary meeting which I have discussed here.

The Acting Chairman: Is there anything else you wish to bring to our attention?

Mr. Worrall: No.

The Acting Chairman: Perhaps we could start with the departmental officials, then, and if anything turns up we will look into it. Thank you very much, Mr. Worrall.

Mr. Worrall: Thank you very much, Mr. Chairman and honourable senators.

The Acting Chairman: We will now hear from Mr. Nicol, who is Director of Parks Canada, Department of Indian and Northern Affairs. With him is Mr. Barry Yates, the Director of the Northern Economic Development Branch.

Gentlemen, you have heard the testimony of Mr. Worrall. Would you care to say a few words?

Mr. J. Nicol, Director General, Parks Canada, Department of Indian and Northern Affairs: I have several comments, Mr. Chairman. First, to the best of our knowledge, the property is inside the boundary. The claims to which Mr. Worrall referred are inside the boundary but do not form a common boundary with the park boundary.

Second, the park boundary is described in the metes and bounds description attached to Bill S-4 which you have before you. So there is a legal description of the park boundary.

Third, of all the various forms of mining I think placer mining has to be the most destructive to the landscape in that it is in effect, a washing of the landscape to get the gold out.

Senator Flynn: Before you go on to that point, I should like to clear up the first point. Are you suggesting that they have not good title to the property as far as mining rights are concerned?

Mr. Nicol: On the contrary, I think their claims are in good standing.

Senator Flynn: How do you say it is within the park boundaries, then?

Mr. Nicol: That is right, sir.

Senator Flynn: How can you declare any property to be a national park before you hold title to the land?

Mr. Nicol: That is quite possible, sir.

Senator Flynn: It does not appear so from this bill, because it is a prior condition to establishing a park or enlarging it that first you should have good title to the land.

Mr. Nicol: Not necessarily.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: This is not an enlargement; this is a new park.

Mr. Nicol: This is a new park.

Senator Flynn: With a new park you do not have to have title to the land?

Mr. Nicol: No.

Senator Flynn: You decide that you are going to expropriate.

Mr. Nicol: Let us put it this way. There is precedent in Point Pelee National Park, for instance, where there were some 100 cottages with freehold title to their land. These were acquired as we went along. In the case of Kluane, we have approached all the claimholders within the proposed park boundary to negotiate the surrender of their claims. This is the proposal Mr. Worrall described.

Senator Flynn: It is not the same system when you enlarge a park, that you have first to acquire title.

Mr. Nicol: That is right, sir.

Senator Flynn: When you establish a park you do not have to do that; you can expropriate afterwards.

Mr. Nicol: We can expropriate before or after.

Senator Flynn: I know. Obviously you can expropriate before; it is even safer. This is a different technique when you establish a park from when you enlarge it.

Mr. Nicol: To a degree, yes.

The Acting Chairman: Have you any knowledge of any claims?

Mr. A. B. Yates, Director, Northern Economic Development Branch, Department of Indian and Northern Affairs: Yes.

The Acting Chairman: Have you knowledge of any claims?

Mr. Yates: There are in excess of 100 claims within the park, both under the Quartz Mining Act and the Placer Mining Act.

The Acting Chairman: Are they mining claims?

Mr. Yates: They are either placer mining claims or quartz mining claims, hard rock.

Senator Connolly: How many other organizations have claims in addition to the one represented by Mr. Worrall?

Mr. Yates: I have not the figures with me, but there are certainly in excess of 50 to 60 claim-holders.

Senator Connolly: Have you had discussions with them?

Mr. Yates: These are proceeding along the lines of the approach made by Mr. Worrall's client.

Senator Connolly: Are any of them developed to any point where they might be commercial?

Mr. Yates: There is one mining property within the proposed boundaries of the park which had an operation a number of years ago, Jehovah Mine, but which ceased operation when the price of copper dropped.

Senator Burchill: What is the area of the park?

Mr. Nicol: It is 8,200 square miles.

Senator Desruisseaux: Percentagewise, what is the area we are debating that is occupied by the mine?

Senator Walker: How many acres, for instance?

Mr. Yates: I am not sure of the extent of this particular claim, but it would be relatively small in relation to the 8,000 square miles.

Senator Walker: If a precedent were set by allowing this mine to operate within the park as expropriated by you, would these people have any better claim than all the other 60 you have mentioned? In other words, are you setting a precedent if this is allowed?

Mr. Nicol: We would like to acquire all the claims within the park area, and we have embarked on a course of trying to negotiate with each claimholder. Mr. Worrall outlined the approaches we have made to date on this. Exactly the same approach has been made to other claimholders.

Senator Flynn: What is the value of these claims? Do you think it would be better to include them in the park rather than exclude them?

Mr. Nicol: We would prefer to extinguish all the claims. As I said earlier, placer mining is probably the most destructive of mining operations to landscape with any large quantity of water. In effect, they have to wash the grounds and soils to obtain the gold that is in there, so it does very significantly alter the landscape as they go along, and leaves it in a condition which does not regenerate, especially in northern territories, very quickly.

Senator Flynn: What will be the use of this park generally speaking?

Mr. Nicol: It will be used for a variety of purposes. Certainly the high alpine snow areas will have a limited use compared with other areas which are more accessible, for several reasons: first, to get there will be difficult; secondly, you have to know how to live in that area; thirdly, in many parts of it you have to be able to live and move in a fairly thin atmosphere. In the other areas we will have many of the traditional types of operation, such as camp grounds, trails, and probably canoe routes. This

will give an opportunity for the less skilful to acquire the services of outfitters, or something like that, to get around.

Senator Flynn: Do you foresee a large number of people making use of this park, one way or the other, on a short- or long-term basis?

Mr. Nicol: I think on the long-term basis, yes. I think the day is not too far off when this will be an option for people in the south, using aircraft to come in, either by tour arrangement, outfitter arrangement, or even hiring equipment when they arrive. There is constant traffic now using the Alaska Highway; some will stop, some will not. There is the advantage, of course, in this park of being at the crossroads of the Haines Road as well as the Alaska Highway. Certainly the Commissioner of the Yukon Territory speaks very enthusiastically about the build-up of tourism in the Yukon.

Senator Flynn: Are you now suggesting that the authorities of the Yukon Territory are favourable to the establishment of this park? In the bill it mentions only consultation. You do not have to have their agreement. Do you suggest you have their agreement?

Mr. Nicol: I would say, yes, the majority.

The Acting Chairman: Have you had any basic consultation with Mr. Worrall or his client?

Mr. Nicol: My staff have had open negotiations. Mr. Worrall mentioned the first meeting. He and his client indicated less than enthusiasm—

Senator Flynn: I suggest, Mr. Chairman—

Senator Connolly: Would you finish that sentence "... less than enthusiasm." I did not know who was not enthusiastic.

Mr. Nicol: I took it from Mr. Worrall's evidence to the committee just now that he was less than enthusiastic. He is here; he can speak for himself.

Senator Flynn: Once you have expropriated the claims of the mining companies operating there, can you change your policy and allow them to resume their operation of exploration?

Mr. Nicol: The policy, as far as national parks at the present moment are concerned—and this was approved by the government—is that there will be no mining activities taking place in a national park.

Senator Flynn: Not even exploration?

Mr. Nicol: Let me ask a question of you, Senator Flynn. If you are not going to permit mining, why permit exploration?

Senator Flynn: If you do not do it yourself, you might let someone else do it. It might be helpful for future decisions.

Mr. Nicol: When the park area was set aside—and this was identified at least ten years ago—there had been a debate about setting aside this area. I think

when you make your decision on the best information you have at the time you make the decision, especially if you have had a long dialogue for and against, you decide on one use or another. Once you make that decision you live with the economics of the decision. The park is not without economic advantage, let me assure you.

Senator Flynn: I believe that, but what I was suggesting to you was that you can make a decision today, and then facts may be revealed tomorrow to make you change the decision and conclude that probably it will be better to use this land for mining, perhaps, rather than for park purposes. By that I mean it is not a final decision. You are not suggesting, I am sure, that if you make a decision today, it cannot be changed in the years to come, even if you should find a wealth of mineral or other resources that would justify changing the purposes.

Mr. Nicol: There is still the power of Parliament to amend the National Parks Act at any point in time.

Senator Flynn: I know the power of Parliament, but you know very well that Parliament will decide in accordance with your own judgment in most cases. Unless you are very often wrong, Parliament will seldom intervene. I don't think this committee can make a decision on the basis purely of the evidence presented to us today, but it is a very interesting exercise, and that is why I am questioning you.

Senator Burchill: If my figures are correct, you said that 8,200 square miles was the area of the park.

Mr. Nicol: That is right.

Senator Burchill: And this little mine that we have been discussing today is just on the rim.

Mr. Nicol: It is inside the park; it is not right on the border.

Senator Burchill: And you said there were a number of other claims. I presume they would be scattered all over the place.

Mr. Yates: Most of the significant areas staked are in the vicinity of Haines Junction which is in the south-west corner of the park, and along the north side of the Haines Road. There are other placer claims on the west side of the park, on rivers flowing out of the park to the west. There are no claims that I am aware of in the centre of the park, over the icefields and in that area.

Senator Laing: Mr. Nicol has told us that these mining claims are totally within the park boundary.

Mr. Nicol: That is right.

Senator Laing: How far are they from the boundary?

Mr. Nicol: Without a detailed map, it is difficult to say, but I think the interests which Mr. Worrall represents cannot be too many miles from the boundary, but so far

as we are aware none of them forms a common boundary with the park.

Senator Laing: I am now developing Senator Burchill's theory that you are dealing with a thousand acres out of five and a half million acres, and it has been represented to us that any flow would be out of the park and not into the park, towards the Donjek Rivers.

Mr. Nicol: The Donjek Rivers are the base of the water they are talking about.

Senator Laing: So any waste would go towards the Donjek and not back into the park. Now the case Mr. Worrall is making is that with a small property like this, and with 1,000 acres out of 5½ million, being close to the boundary—this is his appeal, that it be exempted. But would this apply to the other claims if you were to make a deal with them? Would they say "Us too?"

Mr. Nicol: Well, where do you stop this business? Once you start into excising, where do you stop? Obviously we cannot cut out all of the 100 claims. Otherwise we would not have any park. Some of the areas where the placer operations,—and I am not all that certain that Mr. Worrall's interests are in that area,—are of very significant interest to us from a park value point of view, and the boundaries, especially the eastern boundaries of the park and the northern boundary were drawn after long discussions in which a number of interests in our department, and without our department in some cases, had their say and expressed their view. The park boundary was drawn to maintain park standards but to limit the impact on the greatest area of potential for mining within the park. Now I would be the last one to suggest that there may not be areas that nobody knows about now in the park that would have greater potential, but had this approach been brought to Waterton Lakes National Park, it would be all under oil and gas leases now. There would not be any park there.

Senator Laing: Well, I am concerned about your offer to negotiate, because you are negotiating on something that is not proven. And yet it could possibly be proven by them to be worth a very great sum of money. I am asking you if it would not be to the benefit of the people of Canada if they were exempted, if it only involves 1,000 acres, instead of paying what could probably amount to a very large sum of money.

Mr. Nicol: Well, this will not be the first placer mine operation which had a very optimistic future and did not work out that way, and it probably will not be the last. But in proving out the values which the claim-holders feel are there, it would just totally destroy the landscape from our point of view and its use for our purposes.

Senator Laing: Is this going to be one of the principle areas of access in the park?

Mr. Nicol: It is going to be an area where activity takes place.

Senator Laing: There is no access now except such a road as they have roughly pushed through?

Mr. Nicol: There are some rough roads through right now.

Senator Desruisseaux: Mr. Chairman, this is a supplementary question, in a way. In one of the briefs we have from the Yukon Chamber of Commerce they conclude that not enough is known about the mineral and hydro-electric potential in the region east of the Alsek and south of the Kathleen Lakes for it to be at the time included within the proposed park. They say that they recommend that a two-year hydro-electric power and mineral inventory study be carried out. What are your views on that?

The Acting Chairman: Well, there is another delegation here. They are the people who presented this brief, and perhaps theirs would be the best testimony on that.

Senator Flynn: Not the best.

The Acting Chairman: Well, their verbal testimony. Now, senators, we have the Yukon Chamber of Mines represented by Mr. M. P. Phillips. I understand, Mr. Phillips, that you want to be the first witness.

Mr. M. P. Phillips, President, Yukon Chamber of Mines: Yes, sir.

The Acting Chairman: And we have the Whitehorse Chamber of Commerce represented by Mr. Gillis and Mr. Smith, with their counsel, Mr. Erik Nielsen, M.P. Perhaps Mr. Nielsen is just an interested spectator.

Mr. Erik Nielsen, M.P.: I am always interested in the Yukon!

Mr. Phillips: Mr. Chairman, honourable senators, I want to thank you for giving us the opportunity to speak on the proposed boundaries of the Kluane National Park. I should like to introduce myself. I am Mike Phillips. I am a geologist and President of the Yukon Chamber of Mines. John Gillis is Vice-President of the Whitehorse Chamber of Commerce and Manager of Public Relations for White Pass and Yukon Railways, and George Smith is a member of the Whitehorse Chamber of Commerce and is a resource surveyor and a partner with McElhanney Surveying and Engineering.

I should like to start off by reading my brief, copies of which have been made available, together with copies of the map. I refer to the map in the text of the brief.

The Acting Chairman: Gentlemen, the brief is six pages long. Is it your wish that Mr. Phillips should read it?

Senator Flynn: It could be summarized.

Senator Walker: We will be reading it in any event.

Mr. Phillips: The Yukon Chamber of Mines takes the position that:

(1) Land Use should be to the optimum benefit of mankind.

(2) Optimum benefit includes recreational, historic and aesthetic values as well as economic values.

(3) Permanent allocation of land to "non-economic" uses should be subject to a knowledgeable assurance that the "non-economic" values do in fact represent the optimum values.

(4) Even without a study, the Chamber is prepared to concede that the "non-economic" values present in the Icefield Ranges, and certain of the surrounding area outweigh their economic potential.

(5) On the basis we support the concept of Kluane National Park, subject to the following:

(6) The park boundaries, as presently proposed, include an area at the southeast end within which there is sufficient evidence of hydro-electric power and mineral potential to question whether the "non-economic" values exceeds the economic one.

(7) The Chamber strongly recommends that final inclusion of this area within the Park be delayed until sufficient study of the economic values be made.

This brief outlines in a general way both the mineral and power potential of the area east of the Alsek River and south of Kathleen Lakes. It also recommends further work to evaluate the economic potential before a final decision on the boundaries of the Kluane National Park is made. Our map is included.

The Yukon Chamber of Mines extends its gratitude to your committee for this opportunity to make our submission.

The Acting Chairman: Perhaps you could summarize the rest in your own words.

Mr. Phillips: One item is mineral potential. To our knowledge the only work that has been carried out was mapping done by the Geological Survey of Canada in the late 1940s on the scale of 1 inch to 4 miles.

There was one property which, in 1959-1963, in the southeast end, shipped 3,600 tons of high grade copper.

No economic assessment of these occurrences in the Mush Lake and other rocks around there has been carried out by government geologists.

I follow by stating the work I think should be carried out.

(1) Detailed mapping to a scale of one inch to one mile by economic geologists of the Geological Survey of Canada who are familiar with rock in the area.

(2) Detailed geochemical surveys to locate mineral prospects not yet discovered.

(3) Detailed economic studies be carried out on all known mineral prospects to determine their mineral potential.

These studies, including field work, preparation of maps and reports, would take at the most two years.

The second item is hydro-electric potential. First mention was made by Kindle of GSC who recognized the potential of the Alsek river for hydro power, and also by John Lowe, General Manager of Northern Canada Power Commission, who told the Northern Resource Conference in Whitehorse last year that NCPC had

started looking at the Alsek River for hydro power development because of the heavy environmental impact that developed on the Pelly River and other rivers in the central Yukon.

Another study by George Smith, which has been made available to you here today, indicates that the hydro-electric potential of the Alsek-Tatshinshini basin is in the order of 9 million horsepower or 1.8 times that of Churchill Falls. Many of the rivers and lakes are within the proposed park.

I discussed briefly where we could possibly export this power. I have also done a little showing in a small way of what a source this is.

I conclude by stating that the hydro-electric potential of the Alsek River basin should be carried out, and I indicate that a detailed and comprehensive program of stream measurements, sedimentation measurements and topographical mapping of the complete basin should be done.

Talking to people who are knowledgeable in the hydro-electric field, they feel that two years of study would give sufficient information to know what hydro-electric potential exists in the Alsek River basin.

The Acting Chairman: Now perhaps you might read the conclusion and recommendations.

Mr. Phillips: The Yukon Chamber of Mines concludes that not enough is known of the mineral and hydro-electric potential in the area east of the Alsek and south of Kathleen Lakes for it at this time to be included within the proposed Kluane National Park.

We recommend that two years of hydro-electric power and mineral inventory studies be carried out in this area. Should the studies indicate that mineral and hydro-electric power potential is large, we would recommend that the boundaries at the southeastern end of the Park be reconsidered.

The Acting Chairman: Would you like to discuss your brief, or would any of your associate witnesses?

Mr. Phillips: I would like to call on John Gillis to say a few words on behalf of the Whitehorse Chamber of Commerce.

The Acting Chairman: Mr. Gillis, on behalf of the Whitehorse Chamber of Commerce.

Mr. J. D. Gillis, First Vice-President, Whitehorse Chamber of Commerce: Thank you, Mr. Chairman and senators. On behalf of Whitehorse Chamber of Commerce, I would like to say that we held joint meetings between the Whitehorse Chamber of Commerce executive and the Yukon Chamber of Mines executive prior to the meeting down here at Ottawa, and as a result we are only presenting the one brief. This is one presented by the Yukon Chamber of Mines. However, we would like to go on record that the Whitehorse Chamber of Commerce supports this brief as presented by Mr. Phillips on behalf of the Yukon Chamber of Mines.

We would also like to make it very clear that at this time we do not propose that any change be made in the

boundaries whatsoever. We think it only reasonable that detailed studies be carried out within the proposed park boundaries to determine if the area is in fact a mineralized area that could be mined economically, or if it is in fact more reasonable to have it as a recreational area. We only ask that the area be studied and then decisions made later on, after the study.

Senator Connolly: Study, you said, in respect of mineralization?

Mr. Gillis: And hydro potential.

Senator Connolly: And hydro too?

Mr. Gillis: Yes.

Senator Walker: Mr. Chairman, surely we cannot change the boundaries of the park today? May I move that the department itself should retain an independent firm to study the hydro potentialities as well as the mineral potentialities? From then on we will know more about what was discussed and what it is all about. How can we make a decision on this request today? However, I have made that motion.

The Acting Chairman: Is there a seconder?

Senator Connolly: We do not need a seconder, but I think before we pass solemn opinion on it, we want to hear the Parks people.

The Acting Chairman: Of course.

Senator Connolly: These studies would take two years in both cases, would they?

Mr. Phillips: Yes. I am a geologist, so I am well aware of the sort of studies that have to be carried out as far as carrying out an assessment of the mineral inventory in that area is concerned. I have talked to people in the core business and they seem to have...

Senator Cook: In the case of geological survey, that would be done by the department, is that your suggestion?

Mr. Phillips: My suggestion would be that the Geological Survey of Canada have people within the Survey who are experts in dealing with this type of rock you have there, called volcanics.

I think you should retain an independent economic geologist to carry out the inventory of mineral currents, detailed study of mineral currents. The geochemical survey which I have indicated there could be carried out either by the government or...

Senator Flynn: Would they have facilities for this work in the Department of Energy, Mines and Resources?

Mr. Phillips: Yes, their work is published and the results are made known to the public. They have all the information that is published, so that it would be up for criticism if they did not carry out the matter.

The Acting Chairman: Senator Laing.

Senator Laing: Mr. Chairman, I think there has been a change of heart on the part of the Chamber of Mines. They have varied their opinion of this matter from one time to another.

The fully elected Council of the Yukon approved the park boundary and the establishment of a national park there, and with some knowledge of the territory I would think that this is extremely well founded because I think it is by far, the most spectacular area in North America and it is worthy of a park.

I was not in touch with the Chamber of Mines, but I have a letter from Mr. Smith, the Commissioner who, I have no doubt, was reflecting the opinion of the Council at that time, and he also told me in discussions today—this was dated March 27—with the executive of the Yukon Chamber of Mines, they would now appear to be quite agreeable to the boundary of the national park.

Mr. Phillips may be able to explain this. I know Mr. Smith has made representations to you, and I would like to hear Mr. Smith. I know him, and he is one of the great hydraulic engineers in Canada, having done all the work for Alcan and a great deal of the work that led to the development of the Peace River. I would like to hear his views on the possibilities of hydro power there, and what it would be used for prospectively in the future.

There has been a change of opinion here, and this sort of thing was bound to happen in that you are in an area where enormous development is taking place, where new mines are being discovered, new resources found, and there is always this matter of balancing one thing against the other.

I think our chairman, Senator Hayden, is to be congratulated for giving these people an opportunity to be heard so that we know something about both sides.

Senator Connolly: Could I follow that up? Perhaps when you are dealing with Senator Laing's question you could deal with those additional ones: the area proposed for this park in the bill; the area in acres which you would like to see dealt with separately in some way; and, thirdly, do you know in fact of any surveys that have been made there other than your own, either by officials of the department or by independent inquiries?

Mr. Phillips: Would you like to call on Mr. Smith first?

The Acting Chairman: Yes, whichever you suggest.

Mr. G. J. Smith, Member, Whitehorse Chamber of Commerce: Are you referring, senator, to power?

Senator Connolly: You mentioned resources of two kinds—power and mineralization. First of all perhaps the area in question is the easy one to answer first. How big is the park and how big is the exclusion that you seek?

Mr. Phillips: We are not asking that the area be excluded. We are asking that studies be carried out before we finally decide what the park boundaries should be.

The Acting Chairman: You are asking for hydro studies to be carried out.

Mr. Phillips: And mineral studies.

Senator Flynn: You are not suggesting that we make no decision about the park until two years from now, are you? Because we have to make sure where the boundaries are.

Mr. Phillips: Well, the boundaries were declared on February 14, 1972. Actually, two years would put us to the end of this year when those studies could have been carried out, if the government had thought at that time, "Maybe we just don't have enough information now. Maybe we should declare the park boundaries so mineral staking can take places, and then do our study in two years and have an assessment of what it is like."

Senator Flynn: In the meantime, where would the park be with no boundaries?

Mr. Phillips: At the present time, under an Order in Council that has been passed, no mineral development can take place within that area, so there is no worry of having people going in and carrying out any exploration in that area.

Senator Cook: It is frozen?

Mr. Phillips: Things would stay as they are now.

Senator Flynn: What you want, in fact, is exploration and studies to be allowed to continue for two years?

Mr. Phillips: No. There are two different things here. I am saying that an economic assessment of this particular thing could be done by ground surveys. I am not talking about bulldozing or trenching or things like that. The only equipment we would use would be helicopters, fixed-wing aircraft and people putting small stakes in the ground for some kind of local control. That would be all. That is a mineral study.

Senator Cook: That would be carried out by the local government, would it not?

Mr. Phillips: That is right, the government and the people.

Senator Flynn: Who owns the title to this land at the present time?

Mr. Phillips: The Crown has title to everything within that park except for the mineral claims, both placer and quartz mining claims.

Senator Flynn: Perhaps Mr. Hopkins could clarify this. Is the land in the Territories owned by the Crown in right of Canada?

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: That is right.

Senator Flynn: So, if no exploration permits or anything like that are given, the federal government does not have to expropriate.

Senator Cook: No, it already has it.

Mr. Phillips: May I mention one point here? We carry out mineral explorations in the Yukon and it is all Crown land. We have the right to prospect land.

Senator Cook: From whom do you get that right?

Mr. Phillips: When we want to get title to something which we think will be an economic mineral deposit we put two posts in the ground 1,500 feet apart.

Senator Cook: You stake it, in other words?

Mr. Phillips: Yes. And so long as we stake it and do so much work on those particular claims each year we retain title.

Senator Cook: You file your stake with the local government?

Mr. Phillips: Yes, with the Department of Indian and Northern Affairs.

Senator Cook: You cannot do that now within the proposed boundaries. It is frozen.

Mr. Phillips: That is right.

Senator Flynn: They could decide to permit staking at any time. The local government could do that.

Mr. Phillips: Well, I don't know. The only thing the Territorial Council has done recently is to make territorial park reserves, which does not exclude mining.

Senator Flynn: It seems to me that the legal problem involved in your proposition to delay for two years the determination of the boundaries of the park in order to allow the study that you are speaking of is rather a complex one. We should try to define before we can make a judgment on your proposal, really.

Mr. Phillips: I believe there are now people on the parks board who go into the park to carry out game studies, and there are people climbing in the ice field ranges; there are also geologists and hydro power engineers going in there. We would be doing just about the same thing. We would be making studies. That is all. In these studies we are not drilling holes or making trenches or doing any of that type of work at all.

The Acting Chairman: Mr. Smith, did you wish to say something?

Mr. Smith: I would just like to correct one little statement Senator Laing made a minute ago. He said that I am an engineer. I am not, really. I am a professional surveyor in British Columbia. Although I have spent nearly all my life on resources surveys—and a lot of it has been hydro, including the Kitimat project, I have also had a personal interest in keeping abreast of the various hydro possibilities of northwestern British Columbia and the Yukon. This led me 20 years ago into believing that there was a large hydro site in the Alsek Canyon but at that time there was not enough mapping to support that. Recently, however, when I realized that they were going

to put it into a park I got busy and used the existing information and came up with what I believe was an absolutely fantastic hydro potential.

I feel now that this potential is so great and has such great economic value that it should be studied, and also I feel that it has an economic potential. It is a power site such that you cannot ship the power or transmit the power out of the area. In other words, it is too far away, but it is right on the Pacific Rim, not too far from tide water, and now that energy is getting in short supply around the world it would make a very good area for the establishment of an electro metallurgical industry such as aluminum, titanium and other things.

The Japanese have already stated that they are going to establish such industries in power-rich areas in the trading bloc. So I think that it has a tremendous economic potential, and the reason that I wrote this brief—and I did it on my own weekends and in the evenings—was because I thought that it should be known to the public and put in the public record that this existed.

I believe also that it has to be studied, and probably two years would give you the answers, but you would have to do some drilling on dam sites and things like that. But there would not be too much damage.

Senator Connolly: None of that work has been done in the department?

Mr. Smith: Not anywhere.

Senator Connolly: It is not available in public records?

Mr. Smith: That is right.

Senator Connolly: It is only material that you yourself have compiled?

Mr. Smith: That is correct, but I have had it checked, sir.

Senator Connolly: Yes. How much area are we talking about? Can we have it assessed?

Mr. Smith: I could give you some information. I prepared a map here just for our own reference. The area that does not include the power site would be 6,900 square miles, and the area that you would delete or that contains the power site would be about 1,600 square miles. This would probably include a lot of the mineral area they are talking about as well.

Senator Laing: This would be reducing the park by 1,600 miles?

Senator Connolly: It would be reducing it by more than that.

That would all be in the southeast corner of your big map?

Mr. Smith: That is correct.

Senator Laing: Representations already made by the Chamber of Mines have resulted in a reduction of what—two thousand square miles from the original intent?

Mr. Phillips: In our discussions with the department there has never been a map with fixed lines put on it; it has been a general discussion on certain areas.

Senator Laing: But there was a reduction, I am sure.

Mr. Phillips: I think the reduction was in the mind of the department here. I think what happened was that they wanted a certain area. We said the area we wanted, and they came up with something like this here.

Senator Laing: Did that have any reference to the possibility of mining in the area that was excluded? Were those the representations?

Mr. Phillips: I have never seen a map, and I do not believe anybody in our department has. We have never had any discussion on maps showing boundaries.

Senator Laing: Mr. Smith, what kind of outside estimated power is possible?

Mr. Smith: You mean, how large it could be?

Senator Laing: Yes.

Mr. Smith: This depends on the amount of water available. Again, a lot of it is more or less gas. I have come up here with a little better than nine million horsepower, and I think that is probably possible. Probably half of that is certain; five million is probably certain, because you could get it by diverting the Yukon.

Senator Laing: What is the Yukon using now?

Mr. Smith: It is just a fraction.

Senator Laing: A quarter of a million?

Mr. Smith: I do not think that.

Senator Laing: Two hundred thousand?

Mr. Smith: I really do not know. I know that as far as this resource is concerned it would have to be used for electro-metallurgical industry generating.

Senator Laing: You envisage smelters?

Mr. Smith: That is correct.

Senator Connolly: How far away from the power site?

Mr. Smith: One hundred miles.

Senator Desruisseaux: According to the brief there was at some date a survey made by Mr. Smith of McElhanney Surveying Limited of Vancouver. I see in the brief that Mr. Smith said his study:

...led him to the conclusion that the hydro-electric potential of the Alsek-Tatshinshini Basins is in the order of nine million horsepower of 1.8 times that of Churchill Falls.

It has to be important.

The Acting Chairman: Honourable senators, there is one witness who is not here, but he sent a long telegram to Senator Connolly. I wonder if Senator Connolly would care to read it into the record.

Senator Connolly: I think it might be helpful to the committee if we read it while these witnesses were with us, and perhaps we could invite their comments on it. It is dated June 11, 1973, and comes from Ronald C. Watson, Chairman of the Haines Junction L.I.D., which means Local Improvement District. Do these gentlemen know this man?

Mr. Phillips: Yes, he is President of the Haines Junction.

Senator Connolly: If I might read it, it is two-and-a-half pages long.

Senator Walker: Before you do that, is this the husband of the lady who is on the executive committee?

Mr. Phillips: Yes, it is.

Senator Connolly: What executive committee? Of the Territory?

Senator Walker: Yes, the Territory, on which there are three public officials and two elected. Is that correct?

Mr. Gillis: Yes.

Senator Walker: And they do not share the views of the rest of the territorial government, do they?

Mr. Gillis: That is correct.

Senator Connolly: Is his wife the elected member?

Mr. Phillips: Yes. She is Minister of Education.

Senator Connolly: I may say that when I was chairman I had a telephone call from this man, we did not get together, and following that he sent this telegram, which reads as follows:

On behalf of the Haines Junction Local Improvement District I wish to thank you and your committee for giving us the opportunity to make this very brief presentation on behalf of the people who live in Kluane National Park area. Because of the very short time that we have had to prepare a presentation we were unable to go into any detail and to provide statistical information which is so necessary for this type of presentation. Our main purpose in the enclosed brief is to support the government's stand in the boundaries that they have proposed for the Kluane National Park and to support the amendment to Bill Number Five, the amendment to the National Parks Act, which would give the authority to an order in council to create and establish boundaries of our national park without the necessity of changing the schedule in the National Parks Act for every national park that is created. I trust that our presentation will be given favorable consideration by your committee.

Position paper to the Senate committee dealing with Bill A-5, an amendment to the National Parks Act from the Haines Junction Local Improvement District.

We, the Haines Junction Local Improvement District, strongly recommend that the boundaries of the Kluane National Park remain as designated by the Minister of Indian Affairs and Northern Development in his announcement on February 22, 1972. We believe that the Kluane National Park would preserve one of the really great wilderness areas of Canada for future generations of Yukoners and Canadians, as well as providing an economic base in tourism for the Yukon as a whole, and specifically for one of the most economically depressed areas of the Yukon, the North Alaska Highway region.

The area south of the Alaska Highway and west of the Haines Road encompassing ten thousand square miles was set aside in 1943 as a national park reserve. This area can roughly be divided into two zones: ice fields which cannot be developed by any interest because of their nature and topography and the non-ice field area which is a thin corridor 15 to 30 miles wide bordering the only existing roads, the Haines and Alaska Highways. From the park's standpoint it is the non-ice field area which would receive the most visitor use.

Present boundaries would create less than one per cent of the Yukon into a national park as compared to a national average of two per cent for the provinces. In determination of park boundaries, about one-third or 1,500 square miles of the non-ice field areas has already been deleted as a concession to the mining industry and to trapping rights for the local native population. It is important to note that these areas included in the concession were prime visitor usage areas.

In a letter addressed to the President of the Beaver Creek Community Club dated April 24, 1973, Mr. Chrétien has stated that the boundaries now proposed represent a reasonable compromise between resource development and preservation.

We feel that adequate compromise has already been made to resource development. The further concession of some 400 square miles of the Alsek Basin for hydro development, not only represents a loss of some of the remaining park prime visitor usage area, but has the unfortunate effect of splitting the remaining prime visitor usage area in half and encumbering the development of the concession to other resource development. The further loss of the Alsek Corridor to a resource which can be located equally well elsewhere in the Yukon is not only unnecessary, but unreasonable. We pledge support to the Honourable Mr. Chrétien who stated that adequate concessions have been made. We urge the creation of Kluane National Park with the present boundary determination as soon as possible.

The basic purpose of the National Parks System in Canada is to preserve for all time the areas which contain significant geographical geological biological or historic features as a natural heritage for the benefit, education and enjoyment of the people of Canada. The provision of recreational facilities is

not part of the basic purpose of national parks. The basic national parks policy looks upon a townsite as an intrusion in the park and should be permitted to develop in a park only by reason of the services that it provides the visitor to better enable him to enjoy the park for what it is.

In regard to the Kluane National Park, it has already been determined by the national parks people that they will be looking upon Haines Junction as the service centre for the national park. At the present time the government of the Yukon Territory the local improvement district at Haines Junction and representatives from the national park are planning the development of the Haines Junction community to provide the necessary visitor services and recreation in accordance with the purpose of the Kluane National Park. The townsite of Haines Junction or the community of Haines Junction was first established as a maintenance camp for the maintenance of the Alaska Highway and the Haines Road. The community has now grown to accommodate the tourist traffic, particularly that using the Alaska state ferry system disembarking at Haines and driving over the Haines Road and the North Alaska Highway to Alaska. This pattern of tourist traffic has established some limited business opportunities for people along the Haines Road and the Alaska Highway. The creation of the national park would multiply many fold the number of tourists who would be requiring services in this area. Since the minister's announcement of his intention to create Kluane National Park, the tourist travel has increased and many inquiries have come to the Yukon tourist office asking for information on the Kluane National Park.

The Kluane National Park development must proceed and any delays promulgated by the Yukon Chamber of Mines or the Whitehorse Chamber of Commerce must be curtailed. A compromise was made by the Government of Canada and any further compromises should not be tolerated. We, the residents of the community of Haines Junction, feel that in our planning with the national parks people we could create a viable industry for this area, and at the same time preserve for all time an outstanding natural area and features as a national heritage. Original letter following in mail. Yours truly, Ronald C. Watson, Chairman, Haines Junction, L.I.D....

The Acting Chairman: Will you file that on the record?

Senator Connolly: I will give it to the reporter.

This seems to be at variance with some of the things that you have been saying, and since this gentleman seems to represent the public body there, perhaps we should have these witnesses' opinions about some of the details in this.

The Acting Chairman: Mr. Phillips, you have heard the telegram? Do you have any comment?

Mr. Phillips: I would like to make a few comments. I have talked with people along the Alaska Highway from Haines Junction to the Alaska border, and I have asked them their opinion on the highway, and some of them feel dissatisfied with the area being included in a national park. Mr. Watson indicates that Haines Junction is an economically depressed area, but I think all communities in the Yukon find it very difficult year-round.

One of the problems of an economic base in the Yukon is the fact that tourism lasts for two months of the year, or at the most three months. Tourism is a heavy investment industry because you have to provide a lot of facilities for these people. I, for one, do not want to degrade the tourist industry in the Yukon. In some cases they say that the mining industry is out to play down their importance, but I think it is complementary to the mining industry because quite often the mines open up areas of the Yukon such as we have seen in the Anvil area, and open up roads that provide access to other beautiful spots in the Yukon. I have spoken with geologists who have said, "Well, you have put the park in the wrong spot." They do not think it is in the right spot at all. A lot of these people travel throughout the Yukon. I have travelled throughout the Yukon by light aircraft and helicopter and I have had a good look at the area. I think that while the Icefield Range is unique, the area generally is Rocky Mountain type terrain which is common throughout the Yukon in many areas.

I think one of the comments made by Mr. Watson compares the park figure of the Yukon with park figures for the provinces. I have not recently seen too many national parks being started up in the provinces. We see the provinces going to multi-use parks. In other words, mining can be carried out in the parks, taking into consideration that there are very tough land-use regulations. In fact in the Yukon now we are working under land-use regulations that are very, very restrictive in regard to the type of work we can do. In fact, all the area south of the Alaska Highway and throughout the Yukon is a land-use restricted area.

I think, in closing, that my final comment is that tourism is complementary to the mining industry and I think a strong, healthy mining industry is needed to provide a base on which the tourist industry can grow.

The Acting Chairman: Thank you. Would you like to say something, Mr. Gillis?

Mr. Gillis: Mr. Chairman, on behalf of the Whitehorse Chamber of Commerce I would like to point out that we feel that the mining industry and the tourism industry—or the visitor industry, if you like—can work together, and I think we prove that by virtue of the fact that both of us are appearing here today.

We have also proved it through a Yukon organization known as the Yukon Visitor Association which has members from all over the Yukon, and we invited the Yukon Chamber of Mines to be an adviser to the Visitor Board. There are various areas where we have worked together, but the Chamber of Commerce operates a tourist information centre, distributing and dispensing information

on the entire Yukon, including the proposed park, and we are also interested in new business coming to the Yukon and to Whitehorse.

I think we take exception to clause 11 of the bill, which was mentioned by Mr. Watson, which mentions the parks could be created by an Order in Council. I think if this were put to a vote in the Whitehorse Chamber of Commerce there would be a "no" vote against that part. This is something you might take into consideration as well when reviewing the bill.

But I feel that the mining industry and the tourism or visitor industry have to work together in order to balance properly development throughout the Yukon. I think we agree with Mr. Watson in many areas, and we do not propose that the boundaries be reduced at this stage, until a study is made. I think, Senator Laing, that with your knowledge of the north it is only reasonable to have a study of the hydro potential and the mineral potential of this area before it is proclaimed a park.

Senator Connolly: Can anybody tell us, if we pass this bill, whether we preclude any economic development? If it is going to be of a major character, I should think this committee would say that we do not want to put ourselves in the position where we foreclose a major industrial development that might be beneficial to the people in that area. I say this despite the fact that I would think that the overriding consideration of the committee would be to do everything it could to preserve the national heritage through these parks. But we are sitting here in Ottawa, and we are certainly sitting on the horns of a dilemma.

The Acting Chairman: Well, Senator Connolly, we have Mr. Nicol from the department here, and we can ask him if he has any comment at this stage.

Mr. Nicol: There are several points in regard to the brief which has just been presented to you that I would like to make. The first one was a question which was asked during the discussion: What was the size of the original area?

The original park reserve which was created in the 1940's was 10,200 square miles, and that reserve was maintained, but by amending the Order in Council mining prospecting was permitted. There is still wild life reserve on that 10,200 square miles. The boundaries drawn were drawn on the basis of the best information we had in the total federal government, plus information which was given to us in conversation with the Chamber of Mines. The areas of highest potential identified during those discussions were deleted on the northern and eastern boundaries of the park.

Undoubtedly, as I have said earlier in this session, there could be areas where there are minerals. We do not know. We are working on the best information that is available at this present time. There has been a geological survey, albeit not an in-depth one. There has been very substantial prospecting in that area now for quite a number of years. The idea and the general area of the park has been known for some years. The area was originally identified after a survey of the Yukon

Territory to identify the portions of landscape that had the greatest potential for national parks, and it was certainly judged by those, including an independent consultant, to be the most outstanding area in the Yukon Territory, and it compares very favourably with any other park in Canada.

With regard to our development, the department has not got a copy of Mr. Smith's report, to my knowledge. Certainly, our program has not received it, and I asked Mr. Yates whether he had seen one and he said "no."

You will recall that some years ago another organization studied the potential of the Yukon-Taku rivers. They spent something over \$7 million in that study and identified certainly a power source of very considerable magnitude. Nothing has happened since.

Senator Laing: That was not because it was proven uneconomic.

Mr. Nicol: I think, Senator Laing, because there was no real demand for it at that time, and also because it was involved in an international agreement.

Senator Laing: I do not think we wanted the interests that were involved in that.

Mr. Yates: That was another reason, I think.

Mr. Nicol: I think the second point regarding the power is that if it did come into being it effectively denies us the use of one of the main valley systems in the area which would be one of our prime visitor-use areas. I am not sure who is going to use this power. I have asked Mr. Yates to comment on the present and foreseeable demand for power in the Yukon and how this might be met.

Mr. Yates: Mr. Chairman, without looking forward to any sort of major developments on the Alaskan side of the border, in other words, export of power, our forecasts for the power requirements of the Yukon up until 1980 are 348 megawatts. We are talking in terms of this scheme put forward of 6,500 megawatts, so that gives you some idea. The currently installed capacity in the Yukon is 43 megawatts, and recently an announcement was made concerning the Aishihik hydro power development which is proceedings, with an additional 30 megawatts, which will suffice for the next 4 to 5 years at least. There are a number of other hydro projects identified within the Yukon Territory, some of them meeting the Yukon needs alone, which is the point I am making here, which are closer to the centre of demand. It would appear that one of the first of these would be at the Whitehorse rapids, that is, in the vicinity of Whitehorse itself, which has a further capacity of another 54 megawatts. Then, should there be a major development of a smelter in the area, which many people hope for, there is a site identified on Granite Canyon on the Pelly River which is close to Anvil Mines which has a capacity of 330 megawatts.

So, our judgment would be that for the Yukon needs alone these are the sites that would probably be the

ones developed over the next 15 to 20 years. Thereafter, of course, it is a matter of massive developments elsewhere, probably for export. These other schemes could very well become viable and economic.

Senator Connolly: The ones that this gentleman talked about, I take it, in your view are not needed for foreseeable development or foreseeable requirements; and that when others closer to usable sites have been developed, then this one might at that later stage become of importance.

Mr. Yates: I think if there is some really massive development, we are talking in terms in excess of 3,000 megawatts, and I am not sure whether one can go all the way.

Senator Connolly: Are we shutting the door by passing this bill? Is Parliament shutting the door to the possible development of the area that has been described in the southeast corner of the blocked-off portion for the park, for ever?

Mr. Yates: I think the answer to that, Senator Connolly, is that Parliament has the power to reconsider it at any time by bringing in an amendment to the National Parks Act.

Senator Walker: It is highly unlikely to do that, with section 11 giving the cabinet the power. I respectfully would like to ask whether Mr. Nicol, having mentioned that the Aishihik Power is supplying sufficient power for two to four years, what if the smelter was built, would that not make it necessary to have more power?

Mr. Yates: If the decision is made to proceed with the smelter, then the second site I mentioned here will at least be one of the ones that would be considered, the Granite Canyon site.

Senator Walker: Would that not flood 50 miles along the river or more?

Mr. Yates: There would be some flooding, certainly. There have been no detailed studies carried out on the Granite Canyon. It has been identified as a potential site.

Senator Walker: So everything is really in quite a state of flux, is it not, at this stage?

Mr. Yates: For the immediate future the Northern Canada Power Commission feel satisfied that they have enough potential to carry them over at least the next five years. The next most immediate site, further development on the Whitehorse Rapids, would not involve extensive flooding, and it is capable of producing a further 50 megawatts and exclusive of the smelter, and this would satisfy the mines.

Senator Walker: Just one more question, Mr. Chairman. I should like to know if Mr. Smith, who presented a very able brief here, sent it to the minister. Could you ask Mr. Smith that question?

The Acting Chairman: Mr. Smith, did you send your brief to the minister?

Mr. Smith: Yes, Mr. Chairman, I did. I sent it on June 28 last year. It went to Mr. Chrétien. It went to Mr. Macdonald of the Department of Energy, Mines and Resources. It went to Mr. Austin in the same department and a few weeks later it went to Mr. Smith, the Commissioner in Whitehorse. So there were a number of briefs around. I sent it through the channels because I thought that was where it should go. I thought it should be sent through the proper channels and it was. Everybody was covered.

The Acting Chairman: Honourable senators, without pleading anyone's case, it seems to me that we have a dilemma here because I am only an *ad hoc* chairman, as it were.

Now, I understand the minister considered this, sent it to Cabinet and that there was considerable agonizing over the boundaries. We have conflicting viewpoints here today, and I do not know how we can resolve this unless we set up a sub-committee or else pass the bill.

Senator Smith: Before we go on to discuss the next step, Mr. Chairman, may I ask a question based on the information which was contained in the brief from Mr. Watson, whose brief Senator Connolly read into the record a while ago? I should like to ask Mr. Nicol if it is his understanding, or that of his officials, that the non-icefield area of the Kluane Park really is a thin corridor or 15 to 30 miles wide bordering on the only existing roads, the Haines and the Alaska Highway. Is that his understanding of that situation?

Mr. Nicol: Not entirely, Senator Smith. There is a series of river valleys, the Alsek and the Slims, which tend to interconnect—some of them interconnect and some of them do not—which are below the glacier level or the permanent icefield level.

Senator Smith: Can you give me a rough idea of the number of square miles contained in the area described in the brief as non-icefield area?

Mr. Nicol: I am informed, Senator Smith, that about one-third to 40 per cent of the area is covered by icefields. About another third is covered by mountains, which are inaccessible except to experienced mountain climbers. Something less than one-third, but probably close to it, comprises a series of shredded river valleys, some of which tend to interconnect and some of which do not. When you apply that to your 8,200 square miles, I think you get the figure you are looking for.

Senator Smith: That gives me a little different impression on the amount of land which could be made useable for those who want it.

Another thing I am concerned about is the estimate contained in the brief that less than 1 per cent of the Yukon would be converted to national park if the present boundaries are maintained.

Mr. Nicol: That is correct.

Senator Smith: It is very interesting that in the other provinces the national average is 2 per cent, whereas

from all that vast area up there you take out only 1 per cent. In a small province like Nova Scotia you are taking close to 2 per cent of our area, and it seems to me we are just scratching away a little piece of that land up there.

I am concerned that perhaps there is undue interference with a relatively small area of the proposed boundaries that may be the beginnings of some kind of economic benefit, or whether it would be large enough for us to be worried a little about it.

Senator Laing: Mr. Chairman, I think we should note the divergence of evidence given us here. I am of the opinion that the Yukon and Northwest Territories will never live by tourism. I don't think the Parks Branch thinks that either. The Yukon, particularly, is one of the most heavily mineralized areas on the continent and one of the most productive and most promising.

In the month of February alone—and I was surprised that the mineral people who were here did not bring this point out—with a population of 18,000, the total produced was \$14½ million worth of minerals in 30 days. This year the production will probably be \$160 million out of that small population.

So we have an argument here of the respective values of tourism against a mineral industry not necessarily in the park at all. I emphasize that: not necessarily in the park at all.

Now we come down to deciding, therefore, whether the argument being made by these men within the area of the park in respect of the potential within the park justifies us in taking any action other than approving this bill.

I am going to ask Mr. Nicol how seriously it would disturb, delay or destroy his process of creating a park there if an undertaking were made to do a survey, as Senator Walker has suggested. After that I am going to ask Mr. Yates, who is an engineer and not a surveyor—Mr. Smith is an engineer, too, because every mare is a horse—I am going to ask Mr. Yates to give me a rough idea of what such a survey would cost. I would be afraid that it would be very costly to make any sort of mineral survey or a survey in so far as water potential is concerned.

Mr. Yates: I would rather start with the second part first, because so far as the mineral aspect is concerned it depends on the extent to which you carry out the survey as to how much it costs.

Senator Laing: You have to achieve an opinion.

Mr. Yates: The trouble I find there is that you are always looking to get a little bit more so that you have a better opinion. I think it is indicative that some of the major discoveries in southern Canada recently have been in places which have been mined over or claimed over for many years and somebody has just sort of hit it recently. So it is very hard to be precise in terms of mineral inventory.

I would ask Mr. Phillips, who is a geologist, to suggest if I am way out of line here, but I suppose that something in the neighbourhood of \$250,000 would prob-

ably accomplish the geological survey requirements to determine what might be there. In terms of the hydro potential, it is much more difficult and much more costly. I would suspect that to have a really economic assessment of the hydro potential of that area you would run into over \$2 million, including the environmental aspect, which now of course looms quite large; it would be necessary to look at the environmental consequences of the flooding that would result. Just at a rough guess of the top of my head I would put it at \$2 million or more.

Senator Laing: Could Mr. Nicol answer my question?

Mr. Nicol: Could you re-state your question, senator?

Senator Laing: I asked you, if such a survey were instituted, would it be utterly ruinous to your plans?

Mr. Nicol: I find that a little difficult to answer. It would depend upon what was involved in making such surveys and what kind of disturbance there would be. What bothers me most is if we got to the development stage and were held up because the first quarter of a million indicates need for another quarter of a million; certainly the power development might be in the same boat.

I think I have to return to my earlier statement, that this is not a new thing. The decision was based on the best information we could get, that the most promising areas along that fault have been withdrawn, and were not included in the original 10,200 square miles. I think today we are hearing one side of an argument. On the other side of the argument, the minister has received strong representations from the environmental community, which is most insensed that we did not stick to the original 10,200 square miles. There are shades of opinion on both sides, senator.

Senator Burchill: I did not catch who the representations came from with respect to the withdrawal of the 2,000 square miles.

Mr. Nicol: These were made by such organizations as the National Provincial Parks Association. There was a full report done by Dr. John Theberge of the University of Waterloo in support of expanding the boundaries. The definition of a park boundary is never an easy thing. We try to have the most outstanding areas included in the boundaries. Certainly we try to minimize—and I think we made a very strong effort in the case of this area—the impact on resource based industries.

Senator Walker: Could we hear from Mr. Smith in reply to this? There are very definite differences here.

The Acting Chairman: Is that agreed, honourable senators?

Hon. Senators: Agreed.

Mr. Smith: There are two things that come to mind. One is that the estimate of power requirements given a short time ago just goes to serve the expected industrial

development of the Yukon. This was made probably for taking into consideration the well known energy crisis the world is facing. I think this changes many of the old concepts of what might happen. One has to look at this site as possibly offering the potential to create an absolutely new economic base for the Yukon, and probably North-western British Columbia. It is something very much larger than the old concept. In the same way, it might be said that the people of Quebec intend to develop Northern Quebec power, which would again change or add to the economic base of Quebec. This is something of a similar magnitude, so we have to consider those two things.

If a report was made it should cover the economic aspect. What are you going to use it for? If you cannot use it, forget it. If it is too expensive, forget it. However, I think that is quite important. When it comes to the cost of a report, again you have to consider how much detail you are going into. If you go into a very detailed report that will allow you to build a dam, or to site a dam exactly, it means you would have to do a lot of things which are very expensive. However, if you even had better mapping, if you had good full reconnaissance, some water measurement, the proper kind of engineering can give you quite a fat and good report. In other words, at this stage it has to be, one might say, drawn with a broad brush, simply because the details will cost a lot of money to get into. As long as you know it is possible, you know its economic value and how much power you will get out of it, approximately, within five or ten per cent, say, and you know what you are looking for, in other words what its sale value is, then you have something on which to base a judgment.

Senator Walker: I think Mr. Phillips wanted to say something too.

Mr. Phillips: There are a few questions I would like to direct to Mr. Nicol. One concerns the best information available. Admittedly, the Yukon Chamber of Mines has made information known to the government. I think where the government should be going for geological information is the Geological Survey of Canada to start with; secondly, the resident geologist, who is an employee of the Department of Indian Affairs and Northern Resources. It is my understanding that neither department or section was asked for their opinion on what they thought of including the southeastern area within the proposed Kluane National Park.

I would like to comment on Mr. Watson's mathematics. The park is about 8,500 square miles; the area of the Yukon is about 200,000 square miles. It is about four per cent.

Mr. Nicol: You are quite right.

The Acting Chairman: The correct figure is four per cent.

Mr. Phillips: I would agree with Mr. Yates that the cost of the survey would be approximately \$250,000. I would also like to say again that the information for these

services could have been available to you at this time, possibly, or preliminary studies, and they could have been completed by this year. The park boundaries were prepared last year, in February.

With respect to this best information available, I do not really feel the government has done the digging they should have in order to get the information on where the boundaries should go. If they are saying why they should put the boundaries there, I think the information should be available to everybody, both the conservation groups and people in the mining industry, who are not happy with the boundaries.

The Acting Chairman: Any other questions?

Mr. Nicol: May I comment on this?

The Acting Chairman: Certainly.

Mr. Nicol: I want to correct the impression that the Department of Energy, Mines and Resources were not involved. They very definitely were involved. The Minister of Energy, Mines and Resources was at the Cabinet meeting that considered the park proposal. There were discussions between our officials and the department, not on one occasion but on a whole series of occasions, so we did consult with that department. We had hoped that the compromise we had worked out in regard to the areas of greatest mineral potential would be acceptable, and we had been under the impression until this afternoon that in general terms this was the case. There may have been some minor questions here and there. It is also our understanding that in general the people of the Yukon Territory wish the park to proceed. I am not too sure when you have enough information to say, "This is the point where we stop surveying and make a decision." The principals whom Mr. Worrall represents have spent \$25,000, and they feel they have enough information to indicate a potential of \$16 million or \$18 million. But where do you stop? This is the real question. The areas of the greatest potential, so far as the park boundary is concerned, to the best of our knowledge have been excluded. The park area left is such that one part tends to rely on the other to make an outstanding park. I do not question that a large-scale mining operation would provide a greater economic opportunity than a park, but I would suggest to you that you should not dismiss the economic spill-out of a national park, which is substantial.

You asked where the visitors are going to come from. Well, they are going to come there, if for no other reason, by default. We now have two million people filing through Banff Park every year and this is going to increase. We have 220 million people south of the border and their open space is now overloaded. They have increased the use of their forests, their parks and open land for public use, and they are still not satisfying the need. So this is a very startling part of Canada. Canadians and Americans are more adventuresome and I suggest to you that substantial numbers of people are going to come there in increasing numbers. This, as Mr. Gillis pointed out, tends to be a seasonal operation. But I think there are two mandates we have as far as national parks are concerned; one

is to preserve the most spectacular in Canada in a national system, and the second is to permit wise use to the people who come there.

Senator Laing: What is your projected expenditure over the next five years?

Mr. Nicol: Our general approach in new parks, of which there are ten in the making right now, is somewhere between \$7 million and \$12 million in the first five years. That is capital money.

Senator Laing: Is this for all parks?

Mr. Nicol: No, that is for each individual park. Our operating and maintenance expenses in some of the new parks are about \$300,000, and once they get to an operating level that goes up to something of an average of \$400,000 a year. Now our costs are going to be higher there because, of course, costs in the north are higher.

Senator Laing: What is involved in your costs? Roads?

Mr. Nicol: Roads, campgrounds, trails, and there is going to have to be some system of access to the high country—I don't know how it will be developed yet, whether it will be by fixed or rotary wing aircraft or some other device. There will have to be interpretation in the form of buildings and various exhibits. The ancillary work will permit such things as canoeing, hiking and the basic needs of housekeeping to do all these things. We have to have plants for our staff and for our general operation.

Senator Laing: The trouble is that the whole of the Yukon is a park.

Mr. Nicol: That is true, but as late as 1966 people were talking about Canada's great open spaces. But all of a sudden we have found out that Canada's great open spaces are either in private ownership, in agricultural development, in forestry development, or in mining development to which the public has no access or only limited access. So when you say that these great open spaces are there, you must remember that the ones that are there are now in the territories and are virtually inaccessible except to people who have a great deal of money.

Senator Laing: Well, I disagree with that. I think a great deal of this is emotion. Canada is an open country. The U.S. is an open country. Take away the great big cities in the United States and the whole place is wide open.

Senator Molson: How long is the season in this particular area? Two months?

Mr. Nicol: I think as long as three months.

The Acting Chairman: Mr. Nicol, this is a Senate bill, and it deals not only with Kluane National Park but with several other parks—isn't that right?

Mr. Nicol: That is right.

The Acting Chairman: There are several amendments. It is a global bill, in effect. Now if it were to be passed

here it would go to the House of Commons. Isn't that right?

Mr. Nicol: That is right.

The Acting Chairman: So, gentlemen, I do not know what more facts we could have.

Senator Walker: Well, there is one conclusion. We are voting on this, and we have not had a hydro-electric power or mineral study in depth. That is apparent, so why can we not exclude this particular park from the amendments to the bill?

The Acting Chairman: I am wondering if you would like to hear the minister.

Senator Walker: Well, I do not know any of these people except the member of Parliament, but it seems to me to be a pity that this should pass when these things have not been done.

Mr. Nicol: May I suggest, Senator Walker, that if there were no viable alternatives—and we consider there are viable alternatives—then I would support your remarks.

Senator Walker: There are no viable alternatives to the particular mining potentiality or hydro-electric potentiality in the area which you have expropriated as a park. You are talking about areas outside the park.

Mr. Nicol: That is right.

Senator Walker: Let us leave it at that. We are going ahead and voting on this thing and we have not gone into it.

Senator Molson: We have been talking all the way through as though we accept the view that, once the boundaries of the park are established, no matter what happens, say, 10 or 20 years from now, those boundaries are inviolable. I think it would be extraordinarily difficult to invade them, because there would be a public outcry about ecological considerations. Nevertheless, if either the mineral or the hydro-electric potential in those areas became anything like what is roughly suggested here might be the case, surely it would not be impossible for Parliament to re-examine the boundaries of this park and consider amending the bill, or is that just completely impossible? It is certainly the way we have been told.

Mr. Nicol: I think the answer is that it is quite within the realm of possibility for these parks which have been created by legislation to be altered by legislation.

Senator Walker: But to do that you would have to have either a hydro-electric power study or a mineral power study carried out, and how can you do that once the park is finally designated as such?

Mr. Nicol: As I understand it—and I am on somewhat shaky ground here, senator, and I stand to be corrected by Mr. Yates or Mr. Smith—the study of the hydro potential is not going to have any impact on the landscaping. Am I correct?

Mr. Smith: For investigations of the site, it would not necessarily be something which would have an impact on the landscape—not for the survey; but if you go any further and get into details as to whether there is a density here or a density over there and there is construction, then it might have a tremendous effect on the landscape.

Senator Walker: Are you suggesting that you would allow these studies after the park area has been fixed?

Mr. Nicol: I am speaking of the hydro, not of the mine.

Senator Walker: So, once the boundaries are fixed there is no possibility, after that—and this was Senator Molson's searching question—of determining whether or not there are mining potentialities there—once the boundary has been fixed?

Mr. Nicol: Let me correct the point about the power to permit or not to permit. Essentially, that is correct. In making that statement, you have to recognize that there is a vast area of the Yukon which has been far from completely surveyed.

Senator Walker: I am just talking about this.

Mr. Nicol: I realize that.

Senator McDonald: A moment ago you were referring to the numbers of people who may use the park in the future. Have you any indication of what percentage of total usage of the park would be by Americans?

Mr. Nicol: All I can do is draw upon the experience in both Western and Eastern Canada. In the Atlantic Provinces in some parks the attendance of Americans is as high as 55 per cent. In the western parks, our best survey information indicates 30 per cent in the mountain parks, and about 12 per cent in the Prairie parks.

Senator McDonald: It may be this is a political question, but to me it seems very foolish for us to be providing parks to entertain Americans, on the one hand, and then telling them to get to hell out of Canada, on the other hand. I am not prepared to support any legislation, in view of the attitudes and policies of the Government of Canada today, dealing with anti-Americanism, and on the other hand we want to bring them up here and entertain them. You will not have them here for five years before you have a group in Canada hollering to chase them home again. I think you had better confine building your park to the size that is necessary to take care of Canadians, because you are going in one direction in your department and the other department is going in another direction. You had better have a meeting and decide where you are going, in my view.

Mr. Nicol: I do not think that an official should comment on that statement.

Senator McDonald: I hope you will get the message to the minister.

Senator Flynn: I am not sure what has been the result of an inquiry I made as to whether the minister would look upon the proposals favourably that I made, that some system of public hearings be introduced in the bill before a decision is made for the enlarging or the establishment of a park. I understand from Mr. Nicol that the minister did not look upon this proposal with favour, but has he discussed it with him?

Mr. Nicol: Senator Flynn, I had a subsequent discussion with the minister—and also on the suggestion that Senator Molson made towards the end of the last sitting. I have here three amendments which you may wish to consider, concerning the matter of public announcement prior to the proclamation. I am told—and I am subject to correction by the clerk of the committee—that these could be moved in this committee and form part of the bill when it returns.

Senator Flynn: Any one of these would be acceptable to the minister?

Mr. Nicol: These are acceptable to the minister and the Department of Justice.

Mr. Hopkins: Are they alternative amendments or three separate amendments?

Mr. Nicol: They are three separate amendments, to effect the change which Senator Molson suggested as an amendment to Senator Flynn's proposal. They refer to clauses 2, 10(2), and 11.

The text of the three amendments is as follows:

Clause 2, page 1:

That Bill S-4, An Act to amend the *National Parks Act*, be amended by striking out lines 30 to 34 on page 1 thereof and substituting therefor the following:

“Majesty in right of Canada;

(b) agreement has been reached with the province in which the lands are situated that the lands are suitable for addition to a National Park; and

(c) notice of intention to issue a proclamation under this section, together with a description of the lands proposed to be described in the proclamation, has been published in the *Canada Gazette* at least ninety days before the day on which he proposes to issue such proclamation.”

Subclause 10(2), page 4:

That Bill S-4, An Act to amend the *National Parks Act*, be amended by striking out lines 35 to 39 on page 4 thereof and substituting therefor the following:

“jesty in right of Canada;

(b) agreement has been reached with the province in which the lands are situated that the lands thereby set aside are suitable for a National Park; and

(c) notice of intention to issue a proclamation under subsection (1), together with a description of the lands proposed to be described in the proclamation, has been published in the *Canada Gazette* at least ninety days before the day on which he proposes to issue such proclamation.”

Clause 11, page 5:

That clause 11 of Bill S-4, An Act to amend the *National Parks Act*, be amended as follows:

(a) by striking out line 1 on page 5 and substituting the following:

"11. (1) The Governor in Council may, after" ; and

(b) by adding, immediately after line 16 on page 5, the following subclause:

"Publication of notice (2) The Governor in Council may, after the consultation referred to in subsection (1), issue a proclamation under that subsection, where notice of intention to issue a proclamation under that subsection, together with a description of the lands proposed to be described in the proclamation, has been published in the *Canada Gazette* at least ninety days before the day on which he proposes to issue such proclamation."

The Chairman: Perhaps Senator Laing would care to study these?

Mr. Nicol: There is an official French translation on all these proposed amendments.

Senator Flynn: In clause 11, why do you not mention that we need an agreement of the councils, as you do with regard to the province, not merely consultation?

Mr. Nicol: I would be on a little weak ground here, Senator Flynn. The Province of Ontario has control of the natural resources, including lands within the boundaries. At the present time the natural resources, and this is a generalization, including lands, are generally under the control of the Government of Canada.

Senator Flynn: That would be the reason. I was wondering, though I am not an expert, how far the authority of these councils goes.

Mr. Nicol: The consultations take place with both the Northwest Territories and the Yukon Council. I think the normal practice, Senator Flynn, would have been for the council to pass a resolution. Speaking from memory, I think they did, but I can check that and report back.

Senator Flynn: I suppose the provinces have a veto under this provision here, whereas the council has had just exactly the same thing. In practice it seems to be the same result. In the case of the Council of the Yukon or the Northwest Territories opposing the setting up of a park or the enlargement of a park, I suppose one could get to the stage of just ignoring this expression of opinion.

Mr. Nicol: I would suggest you are right, sir.

The Acting Chairman: Gentlemen, we have some suggested amendments. I do not know whether you think you have had sufficient notice of them or if you would like to examine them. They are now in the hands of Senator Laing.

Senator Flynn: I would think the wise thing might be to have them studied by our legal adviser here, Mr. Hopkins, and in the light of this discussion which has taken place we could meet tomorrow possibly and decide in only a few minutes whether we were satisfied or not. If we are not, we could ask Mr. Nicol to come back.

The Acting Chairman: I understand really the import of this is to give 90 days' notice.

Senator Flynn: Well, to give the public the chance to express their reaction.

Senator Laing: Publication.

Senator Flynn: I think this is the main purpose. What I had in mind was something more institutionalized than that, but at least you give the public a chance to say something.

Mr. Phillips: I would like to make a comment on regulations in the Yukon mining industry the last few years, which is gradually finding itself under regulations, but the problem we find is that three months after the thing has been proclaimed the word gradually drifts back into the Yukon that things are different. Our fear is always that there are never consultations prior to changing anything.

Senator Flynn: You would have a warning 90 days in advance of the intention.

Mr. Phillips: Yes, it is in the *Gazette*, it is buried in there, and now do we know, if it is never brought up in Territory Council?

Senator Flynn: Even if you had, let us say, an official hearing, it would have to be advertised in the same way.

Mr. Phillips: As long as it is published locally in the newspaper, even.

Senator Laing: I am afraid you need a lawyer to keep an eye on the accounting of that.

Senator Walker: Mr. Chairman, I will be very brief. This is an amendment to Section 11, page 5, in carrying out my earlier suggestion.

...and that the boundaries of the said park be not finally set until an independent study of the mineral inventory and hydro electric power study be made, reported on and considered by the Cabinet.

I change one word; instead of "hydro electric power study"—"hydro electric power potential".

The Acting Chairman: Is that the end of it?

Senator Walker: That is the end of it.

The Acting Chairman: Well, we are in the hands of the committee.

Senator Smith: I am a non-lawyer. What is the effect of this? I wonder if we could have an explanation of the proposal. What is the effect that you think would follow from the adoption?

Senator Walker: Of that amendment? That would simply be what was suggested the whole afternoon. Has there been sufficient study to determine whether or not it is just to have the boundaries here when there are the possibilities and probabilities of such rich minerals and hydro-electric potential? Therefore until an independent study is made and reported to the cabinet, no final decision as to the boundary will be made. It will not interfere with setting up the parks, just the boundaries.

Senator Flynn: But you have to have boundaries. I am not against the substance of the amendment, but the technical implications of the amendment I am afraid of. I would like this to be considered by our legal adviser at the same time as the other amendments.

Senator Walker: That is why I am giving it to him.

Senator Flynn: They possibly could be inserted, but I do not think that they should be inserted there.

The Acting Chairman: This bill, I understand, is being drafted by the Department of Justice.

Mr. Hopkins: The other three amendments. I think the Department of Justice should have an opportunity to comment.

Senator Walker: Yes, I thought that would be done.

Senator Flynn: Very well.

Senator Laing: Mr. Chairman, before this amendment comes to a vote or anything further, I would just like to suggest that I think the committee ought to hear the minister. It seems to me the matters that we are finding difficult do come under the heading of policy, and until we hear the minister I do not really feel competent.

The Acting Chairman: I have suggested that twice this afternoon, senator, and I am informed by our witness here that the minister is quite prepared to come. When will he be available? Tomorrow?

Mr. Nicol: He is in the Yukon today and Yellowknife tomorrow.

Senator Flynn: That would be next week, but that could give us time to consider the amendments.

The Acting Chairman: In the meantime your proposed amendment could be carefully considered by the legal authorities too.

Senator Walker: By the Justice Department.

The Acting Chairman: Rather than rush the bill.

Senator Flynn: Mr. Nicol could consider it too.

Mr. Nicol: I am hoping to go west tonight.

Senator Walker: Is there any great hurry about doing it next week?

Mr. Nicol: It is the whole question that it is important to us to get some of these amendments through. I would not suggest for a minute that the committee rush through before they are satisfied they have the information available, Senator Walker. Some of these areas have been worked on now for some time. We would like to get them open to the public. There are a few minor housekeeping items in there, clarification of legal decisions, which continue to make life extremely difficult for the RCMP who do our police work for us in the national parks. To that extent, yes, sir, there is some urgency.

Senator Walker: Anything we can do to expedite it, we would be happy to do.

The Acting Chairman: Will the minister be here next week?

Mr. Nicol: Yes, he will be here next week. I believe Senator Hayden has spoken to him already about an appearance.

Senator Smith: Mr. Chairman, before the end of this consideration, I wondered if we might be hopeful of further consideration at the next sitting when the minister is expected to be here. On behalf of those senators who are not present today, I give notice of motion:

Resolved that consideration be given to a more detailed examination of Canada's present national parks policies by a committee of the Senate later this session.

That is just a notice of motion that I thought it might be well to have on the record, to be prepared to give it some consideration. If such a resolution is adopted by the committee, I assume it would form part of our report to the Senate.

The Acting Chairman: Are you suggesting that the motion be put now?

Senator Smith: No, this is notice.

The Acting Chairman: For consideration. Notice, yes.

Honourable senators, is there anything further to take up at this moment? We have heard the witnesses.

Senator Laing: I so move.

The Acting Chairman: We have had a long session. The meeting is adjourned.

The committee adjourned.



FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 10

THURSDAY, JUNE 14, 1973



Fifth Proceedings on the Examination of the Document Intituled:

“Foreign Direct Investment in Canada”

(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 16, 1973:

"The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the document entitled "Foreign Direct Investment in Canada", tabled in the Senate on Monday, 15th May, 1972, and the subject-matter of any bill arising therefrom, in advance of such bill coming before the Senate, or any other matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

Minutes of Proceedings

Thursday, June 14, 1973.

(10)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to examine and consider document intituled: "Foreign Direct Investment in Canada".

It was proposed that the Honourable Senator Burchill and *Resolved* that Senator Macnaughton be Acting Chairman of the Committee for this meeting.

Present: The Honourable Senators Macnaughton (*Acting Chairman*), Beaubien, Buckwold, Burchill, Connolly (*Ottawa West*), Cook, Desruisseaux, Flynn, Laing, Martin, McIlraith, Molson, Smith and Walker. (14)

Present, but not of the Committee: The Honourable Senators McLean and van Roggen. (2)

The following witnesses were heard:

Independent Petroleum Association of Canada:

Mr. R. F. Ruben, President of North Canadian Oils Limited and Vice President of Independent Petroleum Association of Canada;

Mr. G. W. Cameron, Manager

Canadian Institute of Public Real Estate Companies:

Mr. William Hay, Executive Vice President of Trizac Corporation;

Mr. Garth MacDonald, Q.C., C.I.P.R.E.C.

Mr. G. E. A. Pacaud, Senior Vice President and Secretary, M.E.P.C. Canadian Properties Limited.

At 12 o'clock Noon the Committee adjourned until Wednesday, June 20 at 9.30 a.m.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Thursday, June 14, 1973.

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the document entitled "Foreign Direct Investment in Canada".

Senator Alan Macnaughton (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, this morning we have as witness on the document, for the Independent Petroleum Association of Canada, Mr. R. F. Ruben, President, North Canadian Oils Limited, and Vice-President, the Independent Petroleum Association of Canada.

Mr. R. F. Ruben, President, North Canadian Oils Limited: With me is Mr. G. W. Cameron, the General Manager of our association, and my strong right arm.

The Acting Chairman: Mr. Ruben, you have submitted a brief?

Mr. Ruben: Yes. I believe that all members of the committee have been given a copy of the brief.

The Acting Chairman: I notice your brief is fairly substantial. Would you care to summarize it?

Mr. Ruben: There are actually two addendums to the main brief. However, I will not go into those.

The Acting Chairman: Will you please tell the committee the import of your brief?

Mr. Ruben: Gentlemen, I wish to thank you for the opportunity of appearing here today to represent the Independent Petroleum Association of Canada. As indicated, I am a Vice-President of this association. My full-time occupation is as President of North Canadian Oils, an independent Canadian company that has been in the petroleum business in Canada since 1947. We are a publicly listed company. Our shares are inter-listed in both Canada and the United States. We were first listed in the United States in 1952. We are involved with foreign stockholders and I feel that I am qualified, in some respects, in certain aspects of this bill.

Senator Buckwold: Are you controlled by foreign stockholders?

Mr. Ruben: That is a good question. That is an area of the bill which we consider to be a somewhat grey area. I would say the answer is "no."

Senator Buckwold: You will be discussing that?

Mr. Ruben: Yes. The Independent Petroleum Association of Canada is a Canadian trade association with its head office located in Calgary, Alberta. We are not affiliated with any other national or international organization. Our main purpose is to represent the independent sector of Canada's petroleum industry. Our association has as members 207 companies, 148 of which are independent oil and gas exploration and production companies. The remainder are associate members primarily involved in providing service to the Canadian oil and gas industry.

Over the past 20 years the independent oil and gas companies have accounted for more than one-half of the new field wildcat drilling in Canada. In recent years this activity has increased to the extent that approximately 75 per cent of the new field, wildcat drilling—that is, exploratory wells—in 1972 were initiated by independent Canadian exploration companies.

In terms of ownership—which, of course, is what this bill deals with—the members of IPAC represent just about every conceivable variety of domestic and foreign ownership. We have companies whose ownership is held completely within Canada. We have others whose ownership is held entirely outside of Canada. We have companies where more than 50 per cent of the voting shares are held by foreign investors, but which maintain effective control and management in Canadian hands.

That is the classification, in response to your question, senator. Approximately 64 per cent—and I use this only as an example—of our shares are very widely held outside of Canada.

Senator Buckwold: Under the terms of the act, you would be considered a foreign owner.

Mr. Ruben: That is correct; non-eligible—a term which we will discuss in a moment. But by token of another portion of the act, I believe we could satisfactorily establish that effective control lies with the board of directors, so we would avoid that. That is in answer to your query.

We have companies where a large portion of the equity capital is government-owned, both foreign and Canadian. While some of our member companies are privately-owned or wholly owned subsidiaries with other

corporations, the great majority of our member companies are public Canadian companies whose shares are available on Canadian stock exchanges. It is significant that a number of these also have their shares listed for trading on foreign stock exchanges, principally in the United States.

The Independent Petroleum Association concurs in principle with the board objective of Bill C-132, which is to increase the content of Canadian ownership in Canadian industry. In so far as our industry is concerned, however, we firmly believe that attainment of this objective can best be accomplished by the government taking positive steps to encourage additional Canadian investment, rather than by the establishment of restrictive measures or stumbling blocks against foreign investment.

Because of the high degree of risk inherent in the search for oil and gas, the funds required by exploration companies cannot be borrowed. They are normally provided from the company's internally generated cash flow, the sale of shares in the company, or from the formation of limited partnerships, or, as they are commonly known, drilling companies.

It is estimated that between 25 and 50 per cent of the total money spent for exploration in Canada last year came from foreign investors. It is obvious, therefore, that if we are to maintain a strong and viable Canadian petroleum industry, capable of properly developing Canada's vast resources, we must have continued access to foreign risk capital.

Senator Laing: How many of these were buttressed by contract to take—money advanced for purposes of a contract to take?

Mr. Ruben: I know that you are talking about. You are speaking particularly of the gas utility companies and that type of investment. I do not have that figure at my fingertips. I would say that of the total money spent—I am certainly guessing—I would not think it would exceed, in 1972, 15 to 20 per cent at the most.

Senator Cook: What is the nature of a contract to take?

Mr. Ruben: There have been instances where some of the larger gas utility companies in the United States have private exploration funds for groups in Canada, drilling groups or companies, whereby their principal commitment is that if they discover gas they shall have first call on it at whatever the going price might be. They have first call on the gas, subject to export approval.

Senator Laing: And at a price to be then determined?

Mr. Ruben: At a competitive price to be determined.

Senator Cook: They do not become shareholders?

Mr. Ruben: No, normally they do not become shareholders. They may have a small equity interest in the producing properties, but normally it is a very small share and sometimes it is done to some purpose, such as getting them into there to comply with U.S. laws, to get it into their rate base.

The Independent Petroleum Association believes there are two courses of Canadian government action which would result in a significant increase in Canadian participation and ownership in the petroleum industry. We recommend that they be implemented at the earliest possible time.

The first is that it should allow all Canadian individuals and corporations to expense against general income, direct expenditures made in the search for oil and gas reserves in Canada. This would place Canadian citizens and corporations on an equal footing with citizens and corporations of other countries who are investing directly in petroleum exploration in Canada, as well as developing substantial additional Canadian equity investment in the industry.

Senator Buckwold: You have asked for a 100 per cent write-off for direct costs?

Mr. Ruben: Yes, against general income.

Senator Buckwold: What is the situation under the present act?

Mr. Ruben: Under the new Income Tax Act, for the first time, a Canadian citizen or taxpayer can write off a portion of his unsuccessful investment in exploration against general income. He is allowed to set up an account and write off 20 per cent a year on a declining balance of his investment against general income. Prior to that legislation he could only write off his losses in exploration against eventual success in exploration. His expenses could have been written off against his investment.

Senator Buckwold: So, if there was no success forthcoming—

Mr. Ruben: In that case it was a dead loss.

Senator Buckwold: So he would have no write-off at all?

Mr. Ruben: That is right. This, of course, has been a serious problem. Under the United States tax laws, a U.S. citizen can invest in Canada in exploration and write off his intangible expenses against his general income.

What we are saying is that Canadian citizens, certainly, should be given an equal, if not a more favourable, position.

Senator Buckwold: So you do not consider yourself a "corporate tax bum"?

Mr. Ruben: No, senator, we do not.

Senator Buckwold: In spite of some claims made by leaders of some political parties?

Senator Molson: Order!

Mr. Ruben: We hope we are not.

The Acting Chairman: Perhaps we had better get to the second course of action which you feel the government should take.

Mr. Ruben: Yes. The second course is that the Canadian government should allow Canadian petroleum companies to treat exploration and development expenditures incurred outside of Canada in the same way as those expenditures made in Canada.

The petroleum industry is an international business. We have developed great expertise in Canada. We are recognized worldwide as knowing what we are doing and, as evidenced by recent developments, we have, in spite of our unfavourable tax laws, some 43 Canadian companies involved outside of Canada. The North Sea is one area, certainly, and Indonesia is another. What we are saying here is that the allowable expenses for exploration for Canadian companies should not be limited to Canada. The reason we feel this would result in more Canadian participation is that it would make these Canadian companies more attractive to Canadian investors.

Senator Molson: American companies are able to do that now?

Mr. Ruben: Yes, senator, and they have for many, many years.

Senator Molson: Are other nationality companies allowed to do that now?

Mr. Ruben: To my knowledge, they can.

Mr. G. W. Cameron, General Manager, Independent Petroleum Association of Canada: United Kingdom companies, I believe, can, as can German and French companies.

Mr. Ruben: This would give us an opportunity to expand our industry and it would make our industry much more attractive to Canadian investors. This is what we are really trying to accomplish.

We have given Bill C-132 a very thorough study and, as I previously stated, while we certainly do not take any exception to its ultimate objective of increasing Canadian ownership in our industry, it is our conclusion, after reading this bill carefully, that the proposed legislation, in its present form, could result in a very serious disruption of day-to-day business of the majority of Canadian oil companies operating in Canada today.

As presently worded, Bill C-132, through use of the unfortunate selection of the designation "non-eligible person", attaches the stigma of second-class corporate citizenship on virtually all of the Canadian independent oil companies. This would, we believe, materially hamper the efforts of the companies to attract investors and to raise needed exploration funds. In turn, this would be directly reflected in the general level of exploration activity.

Because of its inconsistency with long-standing security regulations in Canada and the United States—as I said, many of our member companies are inter-listed—and its failure to state just what constitutes acceptable evidence, Bill C-132 places an undue burden on companies to establish proof as to location of corporate control, which is the key factor in the determination of their status. This is

particularly applicable to those companies in which control lies with a board of directors.

Without clarification of clause 3(6)(g) of Bill C-132, the normal function of oil companies in selling and trading exploration rights and land between themselves could come to a standstill or, at least, be severely restricted.

With the extremely low minimum asset value set for the purpose of determining which transactions are subject to review, the bill would affect virtually every transaction of this type in the petroleum industry.

Notably missing from Bill C-132 is the right of appeal to the courts. We feel it is only proper that whereas access to the courts is provided to the government for the purposes of investigation and enforcement, access to the courts should also be provided, as a source of last appeal, for those denied approval for their applications.

While this association has serious reservations as to several other aspects of Bill C-132, which will be presented at a later point in this brief, the foregoing constitute areas of specific concern which we believe can be alleviated by changes which will not unduly weaken the proposed legislation.

With this thought, the Canadian Petroleum Association of Canada requests that consideration be given by your committee to the following suggestions for changes to Bill C-132. First of all, the elimination of the term "non-eligible person" or, in the case of a corporation, again, the term "non-eligible person", where it designates a corporation. We feel rather strongly about this. We feel that the emphasis should be placed on the positive rather than on the negative. We recommend that Bill C-132 be redrafted, as necessary, to provide, by definition, a classification to be known, as a suggestion, as a domestic Canadian person or, in the case of a corporation, as a domestic Canadian company.

Senator Cook: If I may interrupt for a moment, the Canadian Manufacturers Association was with us yesterday and there was some discussion that the bill might be split so as to apply differently between companies which are already established and new companies. This is really what you are getting at here, is it not?

Mr. Ruben: Not exactly, senator. I read the account of that in the newspaper this morning. I believe this approach is a little different from that. This would be for all companies, whether they are established or not. What we are saying is, let us not have a set of rules which states that a company is non-eligible, with all the connotations attached; let us go the other way. There is no reason we can see why this bill should not establish a positive company. It should establish a Canadian domestic company, which is not a non-eligible company, under the same set of ground rules.

Senator Cook: What would be the nature of that company?

Mr. Ruben: Under this bill there are certain rules which designate a company as being non-eligible. No-

where can I find in this bill where it mentions or makes reference to an eligible company; it speaks only of a non-eligible company. The bill states that if a company does not meet certain standards it will be designated as a non-eligible company.

We are suggesting that this portion of the bill be reworded so that a company, by meeting certain standards or not failing to meet the others, becomes a Canadian domestic corporation. Those companies which, by inference in the present bill, would be eligible companies—although they do not mention eligible companies—would be exempt, as they are in the bill, from the provisions of the bill or from being subject to the review provision. This would eliminate the proposed designation of a company—and there will be many, many companies in Canada; indeed our industry would be almost entirely designated as non-eligible companies. The connotations of this could be quite serious, we believe. As an industry we raise a considerable amount of money through public funds, but this is true of all other companies, be they manufacturing or otherwise.

If you have a prospectus, as required in the United States under the Securities Exchange Commission, or a prospectus in Ontario, I am sure it would be necessary that you state in there that such-and-such a company is a non-eligible company. We feel that this is a connotation that is undesirable; we feel this creates a second-class corporation.

The context of the bill need not be changed at all, but by accentuating the positive rather than the negative we can avoid this whole situation.

As we said here, the requirements for classification as a Canadian domestic personal company would be identical to those described in the present bill for a company that or a person who is not to be considered as a non-eligible person. This change would remove the designation of a corporation, as I say, of being non-eligible. The connotation, as we stated, is undesirable. It creates readily apparent discriminatory classification that would be unduly restrictive to the company's future operations. We can see where this could well lead to an artificial reduction in the market value of a company's shares. It would be highly unfair if such were the case and would be discriminatory to present investors. Let us not forget that many of these investors are Canadian as well as foreign investors. It could well be that under the present rules of the bill 75 per cent of the investors could be Canadian investors, and yet to put a tag of this nature on a company could reduce the market value of these shares and hurt a great number of these people.

Senator Beaubien: Mr. Ruben, if you could not qualify as a domestic Canadian company, then wouldn't you therefore become non-eligible?

Mr. Ruben: But only by inference, senator. In other words, I would rather be a non-eligible company by inference rather than be—

Senator Beaubien: Labelled as such.

Mr. Ruben: Yes, labelled as such; that is correct. It may appear to be a small point, but on thinking this through it seems an extremely important one.

The Acting Chairman: Mr. Ruben, I notice your brief is at least 21 pages, with additions. Would it upset you a great deal if we could take your headings, and you could deal with the headings? We are more interested in your own reaction, than in your brief, because the brief we can read in due course; and I am sure we would save a lot of time and you could make your points much more forcefully, although you are doing pretty well.

Mr. Ruben: Thank you, Mr. Chairman. We will try to speed it up. There is one more point on this item. This can be done by the people who draft the bill. This is one of our strongest recommendations; we feel strongly about it.

One other point is that I think it could have serious implications on a company's ability to raise new exploration capital, and this is more or less our life blood and that is our reason.

The next suggestion deals with the presumption as to a non-eligible person, contained in clause 3(2) of the bill. As you recall, in the bill it states that a company that has 5 per cent or more of its shares held by a foreign investor or an eligible person, shall be assumed to be held by one person, or 25 per cent total, held by one or more, shall be considered to be an ineligible foreign investor or an ineligible person, shall be assumed person. We would suggest that that 5 per cent be changed to "more than 10 per cent". The reason for this is that it is virtually impossible for a public company to know where 5 per cent of its stock is, to know if one individual holds 5, 6 or 7 per cent. But when they hold 10 per cent, that company knows that that person holds 10 per cent of that stock. The present securities regulations—and these are long-standing in Canada and in the United States—are a person holding 10 per cent of a corporate stock must disclose his identity and he becomes an insider. He must report any changes in his holdings. So by changing this 5 per cent to 10 per cent, it would greatly facilitate the ability of a company, as well as the government, to know the location of these so-called control blocs.

The fact that the Ontario Securities Commission, the Alberta Securities Commission, and I am not familiar with others in Canada, but the Securities Exchange Commission in the United States, which is of course on the federal level, have selected the 10 per cent figure as a control figure, supports the contention we are making that 5 per cent is perhaps, as used in this bill, an unduly low figure.

Senator Connolly: The 10 per cent is used in the Income Tax Act for insiders, traders purposes?

Mr. Ruben: Yes.

Senator Cook: I think that is an excellent point you have made, Mr. Ruben, and I think it would be a good thing not to have to look at half a dozen acts.

Senator Walker: Instead of "not less than 10 per cent", should it be "more than 10 per cent"?

Mr. Ruben: That is a fine point, senator.

Senator Walker: Not at all, it is a simple point.

Mr. Ruben: In Canada it says, any beneficial owners of 10 per cent or less need not report. In the United States it is 9 per cent or less. In Canada it is 10 per cent or more and in the United States it is 10 per cent; if they have 10 per cent in the United States, they have to reveal it. If they have more than 10 per cent in Canada they have to reveal it—or maybe it is just the reverse. So this is the 10 per cent point. It is not that we are suggesting to get another one per cent, but we are suggesting that the figures be the same under both headings.

Senator Walker: What is it in the Canada disclosure?

Mr. Ruben: Beneficial owners of 10 per cent or less of a public company's outstanding shares in Canada, and 9 per cent or less in the United States, can mask their holdings through the use of nominees.

Senator Walker: To carry that yardstick of 10 per cent or more, that would be "more than 10 per cent", and also would comply with what you are driving at?

Mr. Ruben: The "10 per cent or more" would take us under both covers.

Senator Walker: That is right, that is the point I am making.

Mr. Ruben: The next recommendation is very much the same.

Senator Burchill: What about the maximum?

Mr. Ruben: It is 25 per cent.

Senator Burchill: Is that universal?

Mr. Ruben: That does not tie into the securities legislation, that is a different breed of cat, because the 25 per cent figure used in the bill is simply a threshold for the total outstanding stock.

Senator Burchill: It is a new figure?

Mr. Ruben: Yes, that is right, senator. It allows you the right to go back. You can be over that 25 per cent and still rebut it by certain methods in the takeover.

The acquisition of control is the next suggestion. We suggest that the words in that particular section "less than 5 per cent" be deleted and the words "10 per cent or less" be substituted therefor. This has to do with what constitutes a supposed acquisition of control in the bill and this adds to your status as to what constitutes, in an investment, acquisition of control. The bill, as proposed, provides that 5 per cent or more constitutes acquisition of control and must be submitted for review. We would suggest that this figure, in keeping with our previous suggestion, be changed to 10 per cent or less, for the same reasons. It can be identified, and it is easy to support.

The next item has to do with a company in a position such as our own, dealing with the designation of control.

The bill, as it is presently worded, provides in clause 3(7)(b) that if the company can show to the satisfaction of the agency that no one person holds control of the company, then, regardless of the number of shares that may be held in total, the corporation shall be presumed to be controlled by the board of directors. In other words, if you will pardon me speaking of my own company, approximately 65 per cent of our stock is held in the United States by foreign, non-eligible shareholders, but it is held very broadly; no one owns 5 per cent, to my knowledge. They could, but I have no doubt that they do not own 10 per cent, at least in their own name, and if it is not in their name it is the intent of the act that they are not recognized.

Senator Walker: Not even yourself?

Mr. Ruben: I am a Canadian, sir; I am not a non-eligible person. If that can be established, the agency or the minister will agree that control lies with the board of directors. That is the position of our company and a number of companies are in the same position. In our recommendation with respect to this particular clause and its implementation, we point out that the act does not provide how it may be rebutted. How would this be established to the satisfaction of the government? It is quite a discretionary provision. We suggest that a provision be written into the act which would provide for the filing of an affidavit by the company's chief executive officer to the effect that to the best of his knowledge, no ineligible person holds more than 10 per cent of the voting shares of the company, and that effective control in the company is vested in the company's board of directors, which would be acceptable evidence to the government in rebuttal. The officer filing the affidavit would be responsible for filing notice of any subsequent changes in control of the company. He would, of course, if he filed a false affidavit, be subject to the penalty clauses of the act. We feel that this is consistent with the comments of the minister, the Honourable Alastair Gillespie, in remarks made to the House of Commons Standing Committee on Finance, Trade and Economic Affairs on June 5, 1973, when he stated:

Some public corporations have indicated that they may have difficulty in establishing where control lies because a substantial number of shares are not registered in the names of the beneficial owners.

The Acting Chairman: That is set out in the brief?

Mr. Ruben: Yes, that is set out in the brief.

Senator Connolly: I would like to hear that.

The Acting Chairman: Certainly.

Mr. Ruben:

Some public corporations have indicated that they may have difficulty in establishing where control lies because a substantial number of shares are not registered in the names of the beneficial owners. The simple answer to this is that where the person or persons who for the time being direct the affairs of a

corporation are unaware of the existence of a person who owns a substantial number but less than 50 per cent of the voting shares of the corporation, that unidentified person does not control the corporation within the meaning of the term "control" as it is used in the definition "non-eligible person" in subsection 3(1) of the bill. Accordingly, evidence from the person or persons who for the time being direct the affairs of the corporation that they are unaware of the existence of any person owning a sufficient number of shares to be in a position to control the corporation or from whom they must take instructions would be satisfactory to rebut any presumption of control by any other person or persons.

All we suggest is, to be consistent with his comments, that a provision as to what is acceptable evidence should be written into the act.

Senator Connolly: Or the regulations. I assume if we were assured that it would be in the regulations when the act came into force, it would have the same effect.

Senator Beaubien: But we have no control over the regulations.

Senator Connolly: Yes, they can be changed.

Another facet of what you just said might be of concern. I suppose that this affidavit must be given at the time the application is made. If, through no fault of any one, in the case of a publicly traded company the situation should change drastically shortly afterwards, do you suggest that the company should be pursued further to provide more affidavits, if required?

Mr. Ruben: Yes, sir. I think the company should be required to notify the government of any significant changes or any changes that affect control, not every change. In other words, let us say the act comes into being as proposed in this bill, the company would establish its position as to its status by affidavit. If they could file the affidavit stating that the control lies with the board of directors, as we have suggested, and if there are significant changes in that situation, the company should be responsible. There is no reason why they cannot do this.

Senator Connolly: Even if the change takes place after they have undertaken certain commitments or investments, does it not put an undue onus on the company to have to continually chase the question of its status? Perhaps it might upset the whole applecart originally established on the basis of the first affidavit. Would it not be a completely upsetting requirement for business to have to chase this question of status once the decision of the review board had been taken, perhaps in its favour?

Mr. Ruben: It would upset publicly traded and inter-listed companies. The point is that they may have one status one day and the position may change. There should be provision in the act for some reporting procedure.

Senator Molson: Don't you think that such an affidavit would provide more opportunities for unscrupulous per-

sons, such as those who go to Costa Rica and other places, or even a temptation to do this sort of thing?

Mr. Ruben: No, sir, I do not. In my opinion, we have to assume that people will be very responsible. There are ample opportunities for unscrupulous persons anyway.

Senator Molson: There is no doubt about that.

Mr. Ruben: But this will not provide more opportunity. This affidavit is the intent of the bill, I am sure, but provision for it is not included.

Senator Connolly: Surely you would be happy in a situation such as this? You made an application at a given time and did not have so many non-eligible persons involved as to prevent the application succeeding. You are a publicly traded company and from time to time, with no finagling involved in it at all, you may find through the market that your particular company becomes a non-eligible person. That could change from time to time. Surely the onus should be on the government or somebody else to say, "You are not entitled to the status that the board awarded you"?

Senator Beaubien: How could the company know?

Senator Connolly: That is the point I make. I think it is very unsettling to the company from an administrative point of view. I do not want to get into the general bill, but just to comment on this one point. Surely, this is a very upsetting element in business, if you are going to have to chase status constantly in a publicly-owned company where you may or may not be able to resolve it definitely?

Mr. Ruben: In the first place, senator, you are quite right. Let us separate the application. The first affidavit has nothing to do with an investment, as we see it. Any deals that involve the issue of shares, that involve more than a controlled block, would have to be reviewed or supported by an additional affidavit. It does not change control. I do not see how we can get away from reporting significant changes. I do not think we would find that too objectionable. I know that in my case we would be aware of it. If we go to this 10 per cent, instead of the 5 per cent factor...

Senator Desruisseaux: Isn't a company obliged to make some kind of statement to the security exchange people about any important change in control?

Mr. Ruben: Normally, in the areas we are talking about, of 10 per cent, and so on, the responsibility lies with the individual rather than with the company. Any major change in the company, in its capitalization, is required to be reported.

The Acting Chairman: Perhaps you will proceed with your suggestion "E".

Mr. Ruben: Restrictions on the Composition of the Board of Directors. This ties in with what we had before. According to the act, it provides that if it can be established that control lies with the board of directors,

then the key factor is composition of the board of directors. The act provides that if no more than 20 per cent of the board of directors are ineligible persons, then you pass the test.

We would suggest that the figure be raised to 33 per cent. In other words, we feel that you should be allowed on your board of directors, and still be an eligible company or a Canadian company, to have up to one-third of your board. I think 20 per cent is a rather small figure. In our particular industry, because of our international dealings and international aspect, we feel, we need, more latitude on selecting the best directors for our company.

Senator Burchill: The number of directors of these companies varies?

Mr. Ruben: Yes. It may vary from six for one, and nine for another. For instance, if there are nine directors, instead of being allowed only one, which would apply under this, we are saying that three directors could be non-eligible persons. In our company we have a New York lawyer on the board to look after our SEC work. You may have an investor from offshore. We are suggesting that consideration be given to raising that limitation, that up to one-third of your board of directors can be non-eligible persons without being classified as a non-eligible company.

Senator Flynn: If there were only three directors, it would be difficult.

Mr. Ruben: Section "F". This has to do with the normal petroleum activities and transactions. I am referring to section 3(6)(g). I will read this, Mr. Chairman. Section 3(6)(g) reads as follows, that:

(g) a part of a business that is capable of being carried on as a separate business is a Canadian business enterprise if the business of which it is a part is a Canadian business enterprise;

In the petroleum industry it is a very normal day-to-day operation to sell and trade petroleum-producing lands, exploration lands, exploration rights, and various types of petroleum properties between companies. We are afraid, the way the bill reads now, that normal transaction could be interpreted as being a separate business enterprise and that everyone of these day-to-day transactions would be required to be subjected to review, which would basically stop our industry.

We do not believe this is the intent. There are letters from the deputy minister, in response to questions, stating that this is not the intent. However, we feel that it must be clarified.

We suggest that the following wording be included in this section: "Insofar as the exploration and development activities of petroleum and natural gas companies, this section shall not apply to the sale or transfer of exploration rights; natural gas plants; and gathering or transmission facilities which do not constitute all, or substantially all, of the sellers interest."

We have what is known as a farm-out or farm-in, which is basically a simple thing. One company owns a tract of land or exploration rights which they acquire perhaps on provincial or Crown sale, or by some other means. They may do some work on that and decide they want to farm it out. So company B then approaches them and says they will take the land and will drill an exploration well on that land for a half interest in that land. That is describing it in its simplest terms.

Senator Cook: Is this the first time that you have suggested this amendment? Or has it been suggested to the minister?

Mr. Ruben: No, sir. There have been inquiries written on it asking about this, but there has been nothing asked that they include a specific exemption for this type of thing. We are recommending it.

Senator Cook: This suggestion has not been rejected?

Mr. Ruben: No, sir. We contend that it could be considered, under the loose wording of the act as it presently stands, that on each of these farm-outs somebody could say, "It is subject to review; it could be a separate business." It is not the intent, but this must be clarified for our interest.

The threshold that is established by the bill to eliminate small companies from review transactions is, we feel, far too low. Any company with assets of \$250,000 or \$3 million in gross sales is exempt from the bill. We would suggest that the asset figure be raised from \$250,000 to at least \$5 million.

There is no oil company of any substance whatsoever, if it stays in business, that does not have assets above \$5 million. Strangely enough, our assets are always higher than our revenue. This figure should be changed. We do not recommend a change in the \$3 million sales figure. But if it is the intent of the bill to eliminate small companies and cut down on their work load, the government must raise the \$250,000 figure.

The time factor for decisions. One of the strongest leverages that an independent oil company has in competing with the major oil companies is its ability to move quickly. The independent oil company can move quickly in deciding on making a deal, to take a farm-out, to make an acquisition, to make a quick decision. The major oil companies, as many of you, I am sure, are aware, deal very ponderously with such things. This is a very important leverage for the independent oil companies. So we are concerned about this 90-day period. It could well be 180 days because, as you are aware, the act states that an answer will be forthcoming within 90 days. However, the answer on the eighty-ninth day may well be that the minister wants more information and there is a further 90-day extension given in order to provide the additional information. This could kill the deal. This could be very harmful to the independent sector of the industry.

We recommend that, where we are issuing shares for the acquisition of land or production, or any type of deal that we might wish to go into, the company be

allowed to file an affidavit stating the terms of the deal and stating unequivocally that this transaction, when consummated, will not materially affect the control of the company or change its status, and then be allowed to proceed with the deal. The government would always have the right to challenge that, and if it did not challenge it within 90 days, then it would be clear. If they did challenge it and it turned out to be a false affidavit, the government could then render the transaction null and void, or take whatever action it feels necessary. This would enable us to move far more quickly.

Senator Connolly: What section are you speaking to now?

Mr. Ruben: This appears on page 17 of our brief, senator. I am really not speaking of any particular clause of the bill.

Senator Connolly: You say the bill presently provides for a 90-day period for the minister to make a decision. Where is that provision in the bill?

Senator Cook: I do not quite understand this. You say you are not eligible in any event. When a non-eligible company arranges for financing, the only way you can change the status would be to make it eligible. I do not see the point of this particular observation. You can do all the financing in the world, but you are still not eligible unless you turn around and make yourself eligible.

Mr. Ruben: Well, non-eligible companies, under this bill, cannot deal with other non-eligible companies; they cannot acquire interest in another non-eligible company; they come under the same restrictions.

That point is well taken, senator. I am thinking more in terms of a company that has been established as an eligible company. The investor is the one basically responsible for submitting his investment for approval.

Senator Cook: It seems to me that the recommendation should read that the association recommends that where an eligible petroleum company is arranging financing, then an affidavit could be filed stating that control will not change in point. At the moment, I do not see the virtue of that recommendation as it is presently worded. If you are not eligible, you are not eligible.

Mr. Ruben: I think you are quite right on that, senator. If it is a non-eligible company, the change of control is not going to affect its position.

Mr. Cameron: They are still caught by the screening process, are they not?

Mr. Ruben: In that case it is only if it is of significant benefit to Canada.

Senator Flynn: The additional investment?

Mr. Ruben: Yes.

The Acting Chairman: Shall we go on with your brief?

Senator Connolly: Mr. Chairman, I asked a question to which I have not yet received an answer. I think the

answer may be provided in clause 10 of the bill, on page 18, but I should like to make sure. That clause states:

Where the Minister, on completion of the assessment referred to in section 9, is of the opinion that the investment to which the assessment relates is or is likely to be of significant benefit to Canada and less than ninety days have elapsed since the date of receipt by the Agency of the notice under subsection 8(1), (2) or (3) relating thereto, the Minister shall

(a) recommend to the Governor in Council that the investment be allowed; and

(b) submit to the Governor in Council in support of such information and written undertakings to Her Majesty in right of Canada, if any, on the basis of which the recommendation is made.

What that seems to say is that there is a 90-day period within which the minister has to make his recommendation and report, and that that 90-day period runs from the receipt of the notice under subsection 8(1).

Are you saying that that time period should be abridged to a shorter period?

Mr. Ruben: If at all possible, yes.

Senator Flynn: That is not what you are saying, as I understand it.

Mr. Cameron: We are saying that we should be allowed to file an affidavit to the effect that the transaction will not substantially change the control and not be concerned with the 90-day period at all.

Mr. Ruben: I must certainly acknowledge that we are wrong on this one recommendation, in that it is only applicable to companies who have an eligible status. We are talking about the factor of change of control where we can file an affidavit stating that there is no change of control and that the status does not change.

Senator Connolly: And then proceed with the transaction. But, presumably, there would be a certain onus on the part of the company that if the affidavit is false and the minister is misled, then penalties would apply?

Mr. Ruben: That is correct.

Senator Connolly: But in the normal open case, once you have filed your affidavit, you could proceed with the transaction?

Mr. Ruben: That is right.

Senator Flynn: I do not know if I agree with that interpretation. As far as an eligible company is concerned, if the financing does not change the control, it does not have to go to the minister. You do not need that for an eligible company unless the financing...

Perhaps I can help. I think that this recommendation was drafted having in mind that you would have a domestic Canadian person. In other words, if your first recommendation was accepted regarding a particular characteristic of the company, then this would be im-

portant, because you could file an affidavit stating that the transaction would not change the status of the company. But this recommendation is of no importance unless your first recommendation is accepted.

Mr. Ruben: For example, in the case of a domestic company where we have the 10 per cent threshold and the issue is less than 10 per cent of the stock, there would be no necessity to file an affidavit. But if the issue was 15 or 20 per cent of the stock, but it did not change the control, then we could file the affidavit.

Senator Cook: On the assumption that you are a domestic Canadian person?

Mr. Ruben: That is correct.

Senator Connolly: I think Senator Flynn's point is that if you were below the non-eligible limit, you would not have to file an affidavit.

Senator Flynn: Yes. You would be selling, to a non-eligible person, a portion of the shares that would change the control. If what you intend to do does not bring you under this act, then you do not have to go to the minister.

Mr. Ruben: If it is over the threshold of 5 per cent, or if it is changed to 10 per cent, then, of course, we would.

Senator Flynn: But in the case where the control will not be changed you are not required to file an affidavit. If you are eligible, then the issue of shares will not change the control. You do not have to report to the minister or file anything with the minister.

Mr. Cameron: If you are issuing shares under the present act over 5 per cent—

Senator Flynn: But if you do not sell them to a non-eligible person—

Mr. Ruben: Well, we are assuming that that would be the case; we would be selling to a non-eligible person.

Senator Flynn: Well, of course, that is different.

Mr. Ruben: This recommendation does need clarification.

Senator Flynn: I think you have a valid point. It may have to be looked at from another angle.

Senator Connolly: Even if you put in a recommendation that does not quite fit, it still alerts us to something.

The Acting Chairman: Shall we proceed?

Mr. Ruben: We note in the bill that there is quite an effort made to ensure confidentiality, which is quite commendable. We do not want to affect that at all or destroy that, but we do feel, as is the case in respect of income tax decisions, that there should be, in some manner, available to the public reasons for decisions made by the board. We feel that there should be some way of establishing cases for precedents, so that when someone has an appeal they want to make, on something like income tax, they can look to the precedent and know

whether or not they have a case. I think that should be handled without destroying the endeavour—and it is a very good one—in the bill.

Senator Cook: Certainly, that should be the case if the applicant has no objection.

Mr. Ruben: Yes.

Senator Cook: If the person making the application has no objection for public reasons, that should be so.

Mr. Ruben: Or with his consent, or after a period of two years.

Senator Connolly: What you are arguing for is a body of jurisprudence by which there will be a guide to the people who are making applications at a later time when the act has been in being? I am sorry I do not have the right reference to the section. Where is the section that either does not provide for that or provides for it in a negative way? There must be a section that says that the board shall report to the minister. What you say is that the board is not required to give reasons?

Mr. Ruben: It does not say that they are not required to. It completely ignores it, and there is no provision for public disclosure.

Senator Connolly: You will help us if you tell us where the section is that requires the board to report to the minister.

Senator Cook: It is clauses 10, 11 and 12.

Senator Flynn: Clause 12(1) says:

On receipt by the Governor in Council of a recommendation or submission by the Minister with respect to an investment, the Governor in Council shall consider the recommendation—

and shall allow or reject the investment.

Senator Molson: Yesterday the suggestion was made that the minister should make his reasons known. This was discussed. This is quite a possibility. I think the main thing is that at some stage there should be disclosure as to the allowing or otherwise of an application.

Mr. Ruben: That is right, senator. We are really not suggesting the mechanics.

Mr. Cameron: Clause 14(3) says:

Notwithstanding any other Act or law, no Minister of the Crown and no officer or employee of Her Majesty shall be required, in connection with any legal proceedings, to give evidence relating to any information that is privileged under subsection (1) or to produce any statement or other writing containing such information.

Senator Connolly: That is all right in subsequent proceedings, but I would think—and perhaps I am threshing old hay, as you may have had this yesterday and unfortunately I was not here—I can see some restriction on the minister in making his report to be disclosing con-

fidential information, that is, information that the company thinks should not be disclosed. But on general reasons, you are arguing general reasons for the rejection by the board.

Mr. Ruben: A right of appeal. Our general point is disclosure of the reasons behind a decision. The act makes no provision for appeal in the courts. We are strongly of the opinion that in the case of an adverse ruling by the minister or the board, it would be appealed to the minister. The provision should be provided in the bill for the appeal by the injured party to the courts, on the cabinet's decision. We feel that should be there in the bill.

Senator Connolly: I am sorry, Mr. Chairman, this is the kind of thing that bothers me here. We have to be alert to it. I do not know if there has ever been a decision of a cabinet that is appealable to a court. I think the lawyers would be more concerned about that. This is a matter of procedure and is fundamental to the bill. I can understand a reason for an appeal from a decision of the board to a court; and I can understand, subsequently, an appeal from the court to the cabinet, in the event that there are political factors involved that the court does not take into account. But the decision of a cabinet—which is of its nature a discretionary thing and a secret thing—I should think present grave problems in our system. Perhaps if an appeal is to be considered, the appeal should be one from some decision at a level lower than the cabinet. Perhaps our counsel could give us advice on that.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: I may say I know of no precedent whereby there is an appeal from a discretionary decision of the Governor in Council to a court.

Senator Connolly: That is the point. I think your general thinking is all right, Mr. Ruben, but when you come down to the detailed provisions of the bill you run into the constitutional practice and the problems. Perhaps you should make that kind of a proposal somewhat different. Perhaps what you are really are looking for is an appeal to a court from the board.

Mr. Ruben: I would say that is quite right, sir.

Senator Burchill: Can we put in an appeal, if not to the court, to another body? Senators will remember where there was a matter of customs and the minister made a decision, we decided there should be an appeal from the minister's decision.

Senator Connolly: I think there we were holding out for an appeal to the Tariff Board.

Senator Burchill: Exactly.

Senator Connolly: There is no machinery here to supersede the board that is set up by this. Perhaps you should go to a court. However, it is something for the committee to consider. I am merely raising it here. It is a purely technical problem and it does not go to the heart of your position.

Mr. Ruben: Again, we are not recommending the mechanics or procedure itself. We think that there should be something of an appeal in it and that there are two sides to it.

Senator Cook: What is really means is that the applicant wants to be sure that a proper case was put up to the cabinet, that proper weight was given to his representation and that the whole thing was made public at some stage. Then, as Senator Connolly says, if it goes to the cabinet and it is turned down, that is the end of it; I agree with that. He wants to be quite sure that in the guidelines the full, proper case was put up and that it was not slanted by some bureaucrat at some point when it was being considered.

Mr. Ruben: We need further safeguards, as I am sure has been said by others who have appeared before you, to the very broad discretionary powers granted by this bill.

Senator Cook: I quite agree.

Senator Connolly: Our counsel, for example, or the departmental people, might think that prerogative writs may play their part, and once a board decision has been given, if there is sufficient ground to get a prerogative writ of some kind, perhaps that might supply the kind of appeal to the court that is required. But if there are no reasons, I should think that the use of a prerogative writ might not be too effective—unless you can make your evidence before the court that hears that application *de novo*, get all the evidence that was submitted to the board and put it before them and ask, "Now, was their decision clearly wrong or not, in saying that there was 'no significant interest'?"

Senator Cook: What we really want is some way in which the applicant and the general public can be sure that the minister's discretion was exercised in a judicial manner, and the only way to do that is to have some provision along these lines; otherwise they can do what they damn well like.

Mr. Ruben: At least, we have aroused your interest in the problem.

Senator Cook: Oh, we had it before, make no mistake about that.

Senator Connolly: We had not thought about this, though.

Mr. Ruben: Now we have one or two general points. One is the criterion "of significant benefit". We are well aware that politically this is a very attractive criterion, but we would feel remiss if we did not take our position that we feel that the criterion should be whether a particular transaction is prejudicial or harmful to Canadian interests, and in that case they would be denied. We do not feel that the individual corporation should have to establish what is "of significant benefit". It is the old question of how high is high. It is very loose terminology. It is an invasion of the company's deci-

sions, in our view, and we will leave it at that. It is our expressed view on it. Frankly, I am not terribly hopeful that we can do anything about it. That is one of our concerns.

I would like to make mention of interlisted companies.

Senator Connolly: May I interrupt again? I am sorry. These gentlemen are raising good points, and I am sure we wish to explore them just a little more. Have you any views at all, in connection with "significant interest" in Canada, regarding a situation which may develop involving a company large enough to be scrutinized under this bill but which might be a purely local interest? An example would be a large company operating within the boundaries of one province and having a significant impact on the economy of the area but perhaps not on the remainder of Canada. Do you think there might be spillovers in such a situation which might lead to the conclusion that it could be held to be of significant interest to the entire country? If that is not the case, is that company then simply free to go ahead and make a move without recourse to this act?

Mr. Ruben: Senator, I do not know the answer to that. This is the point that is of such great concern to us, the broad powers and implications which could result from this. As I say, however, our position is strongly that it is wrong, that it should be on that basis, but we are not the ones who can make the decision.

Senator Flynn: We laboured that point at length with the officials of the department recently and came to the conclusion that the words are too loose, giving complete discretion to the minister and the government, and could provide for different treatment of successive applications. We all know that, and there is no solution.

Senator Molson: We also discussed the provincial or regional interest in the same manner.

Senator Connolly: This is true, and we were at that time discussing governmental interest, but here we have a specific commercial interest. I wonder if the witnesses have any views regarding the suggestion to change those words to "significant economic interest, local or national"?

Mr. Ruben: In my opinion "significant" is a very tough word in itself. I do not know how to determine what is or is not significant. I reiterate that in our view it should provide that it is not prejudicial, but that again is something that has to be decided between your committee and others considering the recommendations.

If I may proceed, I would like, in closing, to call attention to our references in several places to interlisted companies. The shares of a large number of Canadian companies are listed in both Canada and the United States. The bill does not anywhere make reference to interlisted companies. I can find no acknowledgement of interlisted companies or recognition of the complexities that the government will face in attempting to deal with the trading of interlisted companies. This is an extremely sensitive area and one that could have, if not handled

correctly, very serious repercussions. I call your attention to the list of interlisted stocks following the first green sheet in the brief. It consists of approximately 150 companies, many of which are of some substance, Canadian companies which are interlisted, mostly on the Toronto and American or Toronto and Montreal Stock Exchanges. I have totalled these on my copy to show the trading for four months ending April 30, 1973. The total trading in shares of these interlisted companies is 160 million traded over American stock exchanges under American Stock Exchange and Securities Exchange Commission rules, as opposed to 42 million traded in Canada.

Senator Connolly: Are you referring now to the appendix, "Interlisted Stocks"?

Mr. Ruben: These are present interlisted stocks.

Senator Connolly: Are you referring to the sheet headed "Interlisted Stocks"?

Mr. Ruben: Yes.

Senator Connolly: Where do you see those figures?

Mr. Ruben: We have totalled them on the second page. I am sorry, they are not on your copies. This is for the first four months, to April 30, 1973.

Mr. Cameron: Under "Toronto" it is 33,226,389 shares. Under "Montreal or Canadian" it is 9,198,937.

Senator Burchill: What percentage of these companies are members of your association?

Mr. Ruben: I have marked a number of companies with dots as being our members. I do not have the exact figure, but I believe at least 20 are members of our association. There are, however, many substantial companies. This, as you mentioned, is not really a listing of our association.

Senator Connolly: No they are members of the exchange.

Senator Molson: We should also remember that the list includes a number of primarily American corporations, such a Chrysler and Gulf Oil, which would have a significant effect on these totals.

Mr. Ruben: That is correct, but it is a list for perusal and gives an indication of the situation.

Senator van Roggen: What is the total for the American exchanges?

Mr. Cameron: 160,105,040.

Senator Connolly: So approximately three times as many transactions took place on the American exchanges as on the Canadian exchanges during that period, is that correct?

Mr. Ruben: It is closer to four times as many.

The Acting Chairman: It is four into 16, 42 million on the Canadian exchanges.

Senator Molson: Do you have a breakdown as to how many of these are United States corporations, resident and operating in the United States?

Mr. Cameron: No.

Mr. Ruben: We perhaps should have provided that.

Senator Molson: It has a bearing, because we are really considering it in the Canadian context and you cannot miss that. Inco, for example, is a very substantial factor on the American exchanges. We know that, but when it comes to Texaco, Gulf Oil, Chrysler and some of these other companies, their trading is really American and, naturally, the trading in Canada is very small.

Mr. Ruben: On the other hand, it will serve a useful purpose to take individual companies, such as Pacific Pet. and others you know, and check. You will find that they run close to this. Isolated examples can be selected.

Senator Molson: I do not object to it. I just think it is another factor in the rounded view of what this means.

Mr. Ruben: That is quite true. My point simply is that when I say it is a sensitive area, I do not see how this bill is going to deal with people buying and selling shares, say, of our company across the American stock exchanges. There could be tender offers. I do not know how they will deal with these things. If the Canadian government starts or tries to enforce the trading of these companies' shares and how it is handled in the United States, and puts restrictions on it, it could be almost disastrous from a corporate standpoint for the interlisted Canadian companies, certainly for the smaller independent oil companies. I think this is a problem area of the bill. It does not appear to have dealt satisfactorily with it. I am not sure how they are going to handle it.

Senator Connolly: A Canadian company desires to float quite a substantial convertible debenture issue on the American market. If the conversion rights were exercised by the debenture holders, those rights would result in control of the company by the debenture holders. That transaction, it is said, is caught by this bill, and the applicant for the right to issue the debentures, the selling company, would have to apply for the right to do this and prove substantial Canadian interest.

"John Brown" in New York, "Peter Smith" in San Francisco, and many others, buy these debentures. Unless they read the fine print on the debentures, they would not know what the condition is. But if they want to sell those debentures to a third party in the normal course of events, then I think that—members of the committee will correct me—before they can sell them, they will have to come to the board again and establish the fact that, while they are non-eligible persons, there is a substantial interest, and the other tests that they must meet must be satisfied before, in fact, they can effectively sell their debentures, or take them at a very brief discount. Are you aware of that situation?

Mr. Ruben: That is just one case of the complexities involved. There are many complexities. I could not say

exactly what they could or could not do. I know they would have great difficulty.

Senator Connolly: Perhaps you have answered my question. In other words, the marketability of the security, that has a condition of that kind attached to it, would be very much less than the marketability of a security that did not have that condition attached to it.

Mr. Ruben: I would assume, senator, that you could not even issue the convertible debentures, once this act is passed, without approval at that point. In other words, they would assume that you are issuing control. The whole transaction of interlisted securities is a real problem.

If the government tries to throw its weight around under this act in the United States, they will depress the value of all these securities and they will hurt a lot of Canadian investors.

As far as I am concerned, present investors, whether Canadian or American, should not be discriminated against by the provisions of this bill. That is not the intent of the bill, but I cannot see how it can do otherwise unless it is handled very carefully. We have made no recommendations on this.

The Acting Chairman: That, in effect, is your conclusion?

Mr. Ruben: If I may, I would like to point out that you are all aware, certainly, that we are confronted with a very serious energy situation. There is a shortage of energy in the world. It is marked by international trade, confiscation and nationalization of private property and rising prices. The situation is rapidly changing from day to day. Canada, with its vast wealth of natural resources, proven and potential, can, over the next few years, establish a strong position, one from which our entire country can benefit greatly. If we are to do this, however, we must maintain a healthy and viable petroleum industry. It must not be impeded by ill-conceived restrictions, the effect of which would offset many times the few intangible benefits that might possibly be derived.

In concluding my remarks, I would respectfully call the attention of this committee to the fact that the exploration and producing sector of the petroleum industry is, with the possible exception of the utilities companies, the most rigidly regulated and controlled industry in Canada. Safeguards as to its conduct exist in both the provincial and federal levels of government. It is our sincere belief in IPAC that any fear of the consequences of a continued high level of foreign investment in our industry are groundless. Without it, we would indeed be in serious trouble. Thank you.

The Acting Chairman: Thank you, Mr. Ruben.

Senator Laing: Before Mr. Ruben goes, I am particularly interested in the last section of his remarks. I am not a corporation lawyer, I am a farmer, and I think I have some regard for the last remarks Mr. Ruben made in respect to resources. It is important that we include in our record some knowledge of just how important this is

to Canada. I would think that if you went out of business or went on strike, a substantial number of lights would go out all over Canada. I do not think there is an awareness of the critical importance at this time of the energy situation as it exists. You tell us that the giants have retreated in exploration this year. You are up to 75 per cent. How do you account for that?

Mr. Ruben: They are moving more to the frontier areas; they are moving to the North Sea; they are moving to the islands. The independents have always done a great deal of the exploration work for the majors.

Senator Laing: What sum of money has been put into exploration in Canada?

Mr. Ruben: In 1972 it was approximately \$540 million.

Senator Laing: What is the total since 1947—\$2 billion?

Mr. Ruben: Since 1947? I should think it would be far in excess of that.

Senator Laing: The prediction was made last week, this being a finite resource, that we have enough resources proven at the present time to accommodate Canada and our export market, at the relative proportions of export and domestic, for 25 years. Are you in agreement with that?

Mr. Ruben: Whose submission was that?

Senator Laing: I cannot tell you. I have an idea that it came from the Energy Board.

Mr. Ruben: I thought there was a figure given of 60 years which came from the Energy Board. I would say, yes, I would agree with that. I think we have to keep moving. This is the most dangerous part of it. This is the part that is the greatest worry. There are many advocates who say, "We have it in the ground. It is Canada's. It will be there when we need it." That is entirely wrong. You do not leave it in the ground. You do not turn it on and off. You have to find it. We know that it is there and we know that it is there in reasonable quantities; but it is costly and time-consuming to find it. There is no way that Canada can say, "We can shut it down and produce it when we want it." That is a great danger that is being voiced by some people.

Senator Laing: Since this is a finite resource and we know of more remote resources, would I be wrong to suggest that it might be wise to us, as soon as possible, to bring in some of the remote resources and start melting prices, instead of consuming the nearby and then finally coming to a crisis 25 years hence, 50 years hence, or 47 years hence?

Mr. Ruben: Your question, senator, is whether we should not be bringing more remote resources in, as I understand it. The United States has had a policy for some time now to get all the offshore oil in before they take the rights away from them and, in doing so, conserving their own to that extent. I think what is needed is a good balance in policy. I think policies along that line

must be subject to constant review in the light of a very rapidly changing world energy situation. I am not capable of giving you a "yes" or "no" answer to that.

Senator van Roggen: May I ask Senator Lang what he means when he refers to "remote resources"? Are you referring to resources within Canada or remote resources around the world?

Senator Laing: I am referring to our own resources.

Senator van Roggen: I believe the witness took it that you meant offshore resources.

Mr. Ruben: Such as the Mackenzie Valley pipeline?

Senator van Roggen: Yes.

Senator Laing: As soon as they are justified.

Mr. Ruben: I definitely think we should, yes.

Senator Connolly: Is it not a fact of philosophy that the development of this resource is that you can incur more and more exploration provided you have more and more production in order to get the money to cover the expense of wildcatting.

Mr. Ruben: That is correct.

Senator Connolly: That is the way the industry, generally speaking, operates, is it not?

Mr. Ruben: That is correct.

Senator Connolly: You do not go in and drill and leave it in the ground and then go to another place and drill and leave it in the ground?

Mr. Ruben: The industry cannot do that. We simply cannot get the funds to do that. We cannot afford to do that. After all, it is still a high risk industry; a high risk venture. You must capitalize on your resources to continue development.

The major point is that Canada has an opportunity, in the next several years, with this worldwide situation, to take a very strong posture. I think it should be done as quickly as possible and with as much encouragement as possible to the industry. I do not mean that as a self-serving statement. Were I in the shoe business, I would say the same thing. The whole country would benefit from that.

The Acting Chairman: Is there anything you wish to say, Mr. Cameron?

Mr. Cameron: Mr. Ruben, I think, has covered everything. The only comment I might make is, in answer to Senator Laing's question regarding the total expenditure by the industry, that since 1947 up to the end of 1972 the total expenditure was \$20.7 billion.

Senator van Roggen: Could I have that figure again, please?

The Acting Chairman: The total expenditure since 1947 to the end of 1972 was \$20.7 billion.

Senator Laing: What have you recovered? Your well-head prices are running at what, \$2 billion a year?

Mr. Ruben: In dollars?

Senator Laing: Yes.

Mr. Ruben: I will ask Mr. Cameron to answer that. He is the statistician.

Mr. Cameron: Slightly under \$2 billion, Senator Laing.

Senator van Roggen: Do you have the comparable figure for 1947?

Mr. Cameron: It would be approximately the same amount. I do not have that figure with me.

Senator Connolly: That is in dollars?

Mr. Cameron: Yes, senator.

Senator Connolly: So there have been \$20 billion put in and \$20 billion recovered?

Mr. Cameron: It is just about at the breakeven point.

Senator Connolly: But the point is that the reserves are still there from which you can continue to draw and again the philosophy comes into play that if you want to up your take you have to explore in order to get more resources.

Senator Laing: Your whole industry is bound on tomorrow?

Mr. Ruben: Yes.

Senator van Roggen: It has not been much of a rip-off, yet.

The Acting Chairman: On your behalf, honourable senators, let me thank Mr. Ruben and Mr. Cameron for a very able and interesting presentation.

Mr. Ruben: Thank you, Mr. Chairman.

The Acting Chairman: The next submission is on behalf of M.E.P.C. Canadian Properties Limited and in that connection Mr. Pacaud is appearing.

Mr. G. E. A. Pacaud, Senior Vice-President and Secretary, M.E.P.C. Canadian Properties Limited: Mr. Chairman, the M.E.P.C. Canadian Properties Limited intends to give over its time to the Canadian Institute of Public Real Estate Companies. Mr. Hays, Executive Vice-President of Trizec, will be presenting the views of the Institute and those views are also the views of M.E.P.C. Canadian Properties Limited.

The Acting Chairman: Fine.

Mr. Hay: you are the Executive Vice-President of Trizec Corporation and you are speaking on behalf of the Canadian Institute of Public Real Estate Companies?

Mr. William Hay, Executive Vice-President, Trizec Corporation: Yes.

The Acting Chairman: What about Canadian Properties Limited?

Mr. Hay: I have no knowledge of Canadian Properties Limited.

The Acting Chairman: You want to proceed first?

Mr. Hay: Yes. To my right is Mr. Macdonald, Canadian Institute of Public Real Estate Companies, and Mr. Pacaud, who will not be speaking. This is to be one presentation on behalf of the Canadian Institute of Public Real Estate Companies.

The Acting Chairman: Fine.

Mr. Hay: We do have a brief, Mr. Chairman, and I believe it was distributed to honourable senators.

The Acting Chairman: Mr. Hay informs me that it is his intention to read a summary of the brief and then answer questions. The summary runs some four pages in length. Is that agreeable?

Hon. Senators: Agreed.

Mr. Hay: Perhaps I should ask Mr. Macdonald to read the brief, Mr. Chairman.

The Acting Chairman: Fine.

Mr. Garth Macdonald, Canadian Institute of Public Real Estate Companies: The summary reads as follows, honourable senators:

The Canadian Institute of Public Real Estate Companies, on whose behalf I present the following submission, is representative of the largest companies in Canada primarily involved in real estate investment and development of residential, industrial, retail, commercial and institutional accommodation. Members of the Institute have combined assets in excess of \$2.8 billion and more than 150,000 shareholders. During 1972, they put in place construction valued at \$400 million. Total value by the industry of residential, industrial, commercial and institutional construction in 1972 was over \$8.4 billion.

The Institute believes that the Foreign Investment Review Act, if implemented as now drafted, will have an extremely detrimental effect on the Canadian economy in the extent to which it will retard real estate investment and development. We have been led to believe, by statements of ministers and civil servants, that this is recognized and that the bill is not intended to apply to real estate. We are advised by legal counsel, however, that the definition of business, as set forth in the bill, is such as to include virtually every form of real estate transaction. Five routine examples are on pages 4 and 5 of our lengthy brief.

I am sorry, Mr. Chairman, that the copies seem to have gone astray. Copies of our full brief were sent in some time ago for distribution.

We respectfully submit that the most desirable means of resolving this conflict between the intent of the bill and the effect of the bill would be to exempt real estate from its application.

Unless estate is wholly exempted from the provision of the bill the Institute submits it is evident the bill must be amended to bring it in lines with the intent of its authors. We propose, by way of amendment that:

(1) The Bill be clarified to make it evident it does not apply to the purchase by non-eligible persons of real estate either as a land assembly for development purposes or as a holding for the production of income. The Institute would be prepared to submit a suggested wording for such amendment if desired.

(2) To take into account the neutral character of most real estate transactions regardless of the source of capital involved, the criteria of significant benefit be modified to recognize such neutral transactions—and that the screening authority be authorized to take into account any other relevant criteria such as social or other considerations.

(3) The restrictions on raising essential debt or equity capital outside Canada which are implicit in the Bill, but which are clearly not intended, be removed. The provisions covering foreclosure by a foreign creditor in the earlier Bill (the Foreign Takeovers Review Act) have already been amended in the present Bill in an effort to accomplish this but the amendments do not go far enough;

(4) The removal of the barriers to internal corporate reorganizations, where there is no effective change in ownership or control, which are implicit in the Bill;

(5) Provision be made, as circumstances dictate, for relief from the screening process by way of binding ministerial rulings;

(6) Recognition be given to the role played by joint ventures and provision made for their treatment in the same manner as corporations.

Foreign capital is essential to the continuing expansion of the real estate industry. It provides a source of participatory capital in land development such as the construction of office towers, shopping centres and apartment complex. It also provides a market for the completed products of Canadian developers. Scarce domestic capital is thereby recycled; the Canadian funds used in the construction of an apartment house, for example, being freed for re-employment by the sale of the finished property, as a source of income, to a foreigner.

For all the dependency of the industry on foreign capital, however, there is no indication of a large foreign presence in the industry nor is there any absence of active and vigorous competition by Canadians.

Real estate development and investment makes a major contribution to economic growth in the employment it creates for construction workers and their suppliers as well as in the provision of essential accommodation of all types. At the same time, the nature of the industry is such that it is captive of, and must conform to, national requirements.

Its activities are all related, in one way or another, with land or buildings or with both. The industry includes companies which buy and sell and develop land, which construct or buy buildings in almost infinite vari-

ety for sale or to retain as income producing assets, which engage in development through joint ventures, which engage in all or any combination of these activities.

All members of the industry are required to engage in these activities within the framework of the domestic economy. There is no other choice. Bricks and mortar, unlike many forms of industrial production, are not mobile. Foreign participation, far from being a threat, actual or potential, to economic sovereignty, makes an essential contribution by its provision of supporting capital to the extent to which Canadians can engage in these activities.

The Institute notes the minister anticipates that 150 to 200 transactions will be screened annually as the Bill comes into force. It is quite conceivable that any one member of our Institute could initiate on its own account that many transactions in a year. Application of the bill to real estate investment and development would cause the screening agency to be swamped—creating an unnecessary and certainly undesirable slow down in its activities.

The Acting Chairman: Now, Mr. Macdonald, there are other documents which have been filed. What do you wish to do with M.E.P.C. Canadian Properties Limited?

Mr. Pacaud: Mr. Chairman, perhaps I might speak to that. We would like our letter to be on the committee's files so that the committee will have at least the benefit of our written word. If there are any questions which come up on which I can give any assistance, I shall be glad to do so. It would be as a representative of CIPREC rather than M.E.P.C., unless you wish me to submit any particular matter in regard to M.E.P.C.

The Acting Chairman: Honourable senators have received copies.

Senator Cook: Do I understand that you have been notified that you do not come under the bill?

Mr. Macdonald: This has been a problem that we have been coping with from the commencement of it, over a year ago. We are told that real estate transactions and real estate, as distinct from business that may be conducted on real estate, is not regulated by the bill.

Senator Burchill: Does that information come from sources in the government?

Mr. Macdonald: Two of the ministers who have been responsible for the bill plus, the departmental officials. On the other hand, we were so concerned about it that we retained the services of the three most prominent law firms in Canada to advise us of the correct legal interpretation of the bill. Their advice was that in almost every conceivable instance real estate transactions were regulated by the bill.

We felt that was so and, in any event, even in circumstances where they said it might be hazy or uncertain, they said, "when you are talking about the millions of dollars you are proposing to invest, how could you do anything safely on your own judgment? You would, for your own safety, have to go through the screening process."

Senator Cook: Ignorance of the law is no excuse—even if a minister shows it.

Mr. Macdonald: We are not anxious to make more money—three of us here are lawyers, but we are not anxious to make money for the profession; we are anxious to have some certainty as to where we stand.

Senator Desruisseaux: What would be the full effect of the adoption of the foreign investment bill now?

Mr. Pacaud: May I give part of the answer to that? I am perhaps speaking more for MEPC than for CIPREC. We are an investment company and a development company. We believe that each rental building that we buy as an investment is a business. Therefore, when we go to purchase a rental property as an investment, we will be required to have it screened. However, we feel that this kind of investment in rental property is a neutral type of transaction. We will have no hope of showing that it will be "of substantial benefit", and thus we cannot carry out any longer our business of investing in property. In our opinion, that is grossly discriminatory and unfair. The point is that we might attempt to purchase for \$1 million, an apartment building which is operated by a Canadian individual who employs two caretakers for the 20 units in the building. We would take over the two caretakers in the transaction and might fire one because we did not need two and would operate it as an investment. It would be fully rented and nothing would change except the ownership and the collection of the income generated from the rents. I can see no possible benefit to Canada because of that change in ownership, with great respect.

Senator Connolly: Could you not conceivably establish a significant benefit if, as a result of foreign money making this purchase, the Canadian funds that were formerly invested in it went to some other development? Is that not a benefit, whether it is national or only applies, for instance, to Sandy Hill?

Senator Flynn: It is impossible to establish a criterion that when foreign money buys property the seller will use the proceeds of the sale for other Canadian investment.

Senator Connolly: But the brief states that is a possible result and, conceivably, I suppose it is.

Senator Flynn: But the minister will not judge the second transaction, only the first.

Senator Beaubien: Is the point not that every time you wish to buy into something you would be obliged to go to the department for a ruling? Maybe eventually you would receive approval, but the whole point is you cannot do anything in the meantime.

Senator Cook: The department treats all foreign money as guilty and it must be proved to be innocent.

Mr. Hay: With respect to Senator Connolly's comments, I would like to add that even the potential benefit he

has in mind is not taken into consideration in the five criteria.

Mr. Pacaud: A problem which I did not mention is that if we are forced to come to Ottawa in connection with each investment, the real estate investment market being extremely competitive in this country with, in many cases, several potential purchasers for one building, we will simply not be in business tomorrow. A seller will not be willing, unless he is offered a significantly large amount of money, to wait for the blessing of the government for our purchase. This delay may well extend beyond the 90-day period, as Mr. Ruben pointed out.

Senator Laing: What has been the experience during recent years with respect to the breakdown of foreign money coming in, as between equity and debentures?

The Acting Chairman: May I refer Mr. Macdonald to page 3 of the brief, which contains overall figures for the industry? Perhaps he could apply Senator Laing's question to it.

Mr. Macdonald: The figures to which you refer Mr. Chairman, read as follows: "According to Statistics Canada the total value of this construction and..." I am referring to apartment buildings, homes, office buildings and commercial accommodation, "... in 1972 was in excess of \$8.4 billion." You can imagine the capital requirements to produce that.

Senator Connolly: Where is that statement in the brief?

Mr. Macdonald: It is at the top of page 3 of my full brief, Senator Connolly, in the grey cover. That paragraph continues:

... The Economic Council of Canada has estimated that by 1975 the annual value of residential construction alone will exceed \$5 billion or 4.4 per cent of Canada's gross national product. Industrial and commercial construction will add greatly to this total. The significance of the industry in the Canadian economy is apparent.

I am not able to answer Senator Laing's question as to the breakdown between domestic capital and foreign capital and loan versus equity.

Mr. Hay: No one has accurate statistics which would answer your question, but the bulk of the funds, of course, come in by way of loan capital. There has been substantial, primarily British, investment in Canada by way of equity. I could not produce any accurate numbers.

Senator Cook: A great deal of the funds come from insurance companies, do they not?

Mr. Hay: Yes.

Senator Cook: Which are mostly in the form of debt.

Mr. Hay: Yes, except that in the last few years the insurance companies have been asking for some equity participation.

Senator Cook: That is only as a bonus, is it not?

Mr. Hay: It is a bonus to them, yes.

Senator van Roggen: When is that mortgage or loan paid off?

Mr. Hay: Very frequently continuously. The vehicle used quite often is sale of the land to the insurance company and lease back for the purpose of the project at a rental which has relationship to its value and also to the gross revenue derived from the project.

The Acting Chairman: There has been very substantial investment from France, Germany and Switzerland, has there not?

Mr. Hay: Yes, there has been.

The Acting Chairman: In the hundreds of millions of dollars.

Senator Flynn: And from Italy.

The Acting Chairman: Yes.

Senator Desruisseaux: And from the Vatican.

The Acting Chairman: They are a separate state.

Senator Desruisseaux: Yes, but they are in the same boat.

Senator Flynn: May I suggest that we consider the remark made by Senator Connolly a few moments ago in connection with the funds which would be released for other purposes? This would apply to the whole area of foreign investment in real estate and would be a good argument for exempting real estate business from the act because any foreign investment in real estate in Canada would release other money for risk endeavours. You could use this argument generally. Attempting to prove it in every case would be very difficult, but proving it as a rule would be easier.

Senator Cook: That is the general rule, anyhow, and the whole purpose of foreign capital. It does not matter whether it is real estate or oil.

Senator Connolly: Senator Flynn is quite right. It may be an argument to remove your industry from the purview of the act.

Mr. Macdonald: It would be relevant to add that we are surprised to find that we are regulated by the act at a time when a number of provinces, for the protection of their shore and recreational lands are introducing legislation to regulate the foreign ownership of land and when a federal-provincial committee has been established to consider the legalities of the whole question.

Senator Connolly: This is very important, because it is true in Ontario and some of the Maritime Provinces. It arises from the fact that in many American areas offices have been established to sell Canadian land for taxes. Great gobs of this land are being purchased by foreigners, particularly by Americans. What kind of prob-

lem does that involve? Is it the kind of thing we should be concerned about in this bill? I should not think so. Nonetheless it is a fact that can very well affect the proposal that Senator Flynn and I were raising.

Senator Burchill: Prince Edward Island has legislation affecting Americans.

Mr. Macdonald: We are all foreigners under this bill. We sincerely feel that the extension of this act to real estate was not intended. Nor was it understood, until we came rushing forward to say, "Look what you are doing!" I should like to add some statistics that were asked of the people who made the prior submission.

Our institute, although it is representative of the very largest companies in this industry, by no means dominates it. Our total construction last year amounted to 5 per cent of the total, and yet our membership consists of companies such as Fairview and Trizec, and the real estate arm of the CPR which, incidentally, are deemed to be foreign-controlled under this legislation.

Senator Cook: Presumed to be, not deemed.

Mr. Macdonald: The onus is on them to demonstrate that they are not. They are deemed. There is no question but that they are deemed to be foreign-controlled.

Senator Cook: I would have thought "presumed" rather than "deemed".

Mr. Macdonald: I am using the language of the bill. I think it says "deemed". But I would agree that I would have preferred the word "presumed".

Senator Burchill: Where is your headquarters?

Mr. Macdonald: Our headquarters are in Toronto. With regard to our membership, there are only 32. Of that membership, six are definitely foreign-controlled, three are close to the point where their situation is uncertain, seven would be deemed to be, as would the CPR, but are not in fact foreign controlled; and 16 are clearly Canadian owned. So that the overwhelming balance, or majority, of our membership is made up of Canadian companies.

The impact of this bill does not have an effect only on non-eligible persons or foreign controlled companies. It has, in at least three respects that immediately come to mind, adverse effects on Canadian companies. I could review those, if senators wish me to.

Senator Desruisseaux: I would like to know whether your members purchase and operate companies.

Mr. Pacaud: Perhaps I could answer that question. Typically, real estate investment companies purchase companies, but they only acquire the buildings. They only purchase shares because vendors, for tax reasons, will not sell to realty. I do not think the institute or any members of the institute would mind if their acquisitions had to be reviewed, if they were major corporate acquisitions. When you are talking about buying a small company that owns a single building, about single build-

ings that are rented and having them revealable, competition is such that we will not be competitive with other people.

Senator Desruisseaux: I wanted to know whether you were buying companies and operating them, and then releasing them on the market to somebody else—selling them.

Mr. Macdonald: You mean industrial corporations.

Mr. Pacaud: We are not in the industrial area at all. None of our members are in the industrial sector at all.

Senator Flynn: There is no doubt that if a real estate company would buy the shares of an industrial company, that it would come under the act.

Mr. Macdonald: Our general membership is limited to companies who are involved as principals in real estate investment development and whose shares are listed on a Canadian stock exchange.

Senator Connolly: Surely, this does not apply in the case of sales by your companies. You own the real estate. You are Canadian owned; you are not an ineligible person. You have to get approval to sell to a non-eligible person. The whole point is the sale of an asset owned by your organization, which is all Canadian, to a non-eligible person.

Mr. Macdonald: There is the other side of the coin, which is the purchase by some of our members, who are non-eligible, of real estate—as, for example, the purchase of a farm in order to build a residential subdivision, or the assembly of a block of obsolete properties in Ottawa to put up a Place de Ville, and so on.

Senator Connolly: Among your shareholders you have non-eligible shareholders.

Mr. Macdonald: Yes, we do indeed. We have six in that category and three whose status is so close to the point.

Senator Connolly: Six out of how many?

Mr. Macdonald: Thirty-two.

Senator Connolly: What is the proportion of the holding? What percentage do the six hold?

Mr. Hay: It would certainly be about half of the total gross assets.

Mr. Macdonald: In that is included Trizec, which is the largest real estate company in North America. Incidentally, some of these companies are moving into the States. There was an announcement yesterday that McLaughlin, a fully Canadian owned company, has moved into Detroit.

Senator Connolly: Is there any legal obstacle to their moving down there?

Mr. Macdonald: Not so far, but there have been some rumblings that this is a two-way street.

Senator Connolly: You say that 50 per cent of your equity is owned by foreigners and 50 per cent by Canadians. As a result of that 50 per cent ownership, is there technology that you get from their know-how, that helps you in your development?

Mr. Hay: I do not think so, senator. I think the operating management of all of the companies is Canadian. I think Canada has its own techniques and its own methods of construction and operation.

Senator Connolly: The only advantage is money?

Mr. Hay: Money is the advantage.

The Acting Chairman: Are there any further questions? I think we have the import of this brief.

Senator Connolly: You want land transactions to be excluded?

Mr. Hay: That is correct. If they cannot be included, we are asking that the minister be given some ministerial discretion to say that this transaction does not affect Canada and is exempted on an individual basis.

Mr. Macdonald: That obviously is a very much less satisfactory solution because it precludes any real long range planning and creates a climate of uncertainty as to what you can or cannot do. If, after a most thorough examination it was established that there should be restraints on real estate, that is fine; but we should not be stepping in almost inadvertently.

Senator Connolly: If you give a discretion to the minister, would you not be back where you started?

Mr. Hay: Yes, I think we would.

Senator Connolly: Have you put this specific problem to the minister?

Mr. Hay: Yes, we have, on a number of occasions.

Senator Connolly: Publicly or privately?

Mr. Hay: Privately, and we have discussed it also with the responsible civil servants.

Senator Connolly: Have you put it before the committee of the House of Commons?

Mr. Hay: No, senator. We were supposed to do so yesterday, but a division occurred, so we were tossed out.

Senator Connolly: Do you intend to go before the committee of the House of Commons?

Mr. Hay: Yes.

Senator Connolly: Has the answer been in the negative all along?

Mr. Macdonald: It has been completely uncertain. We have been met by advice that it really does not apply to real estate. But looking at the wording...

Senator Connolly: The word "business" brings you in, according to your submission. In any event, they have given you no reasons as to why they will not exclude it?

Mr. Macdonald: They have told us it is under consideration.

Senator Connolly: Perhaps we will get that.

Mr. Pacaud: There is one point, Mr. Chairman, I should like to make. In the Institute's view and in the view of M.E.P.C. Canadian Properties Limited, there is just no evidence that foreigners or non-eligible people have a huge holding or stranglehold on commercial real estate in this country. The effect of the bill, in our view, will be, potentially to put us out of the commercial real estate market, because of the competitiveness of it. This seems a bit far-fetched when land policies are under consideration by both the federal and provincial governments.

Senator Molson: If it puts you out of business, who is left?

Mr. Pacaud: I do not know.

Senator Molson: You are suggesting there will be a vacuum.

Mr. Macdonald: There was \$8.4 billion required last year, Senator Molson. Where is that money coming from?

Senator Molson: That is another question.

Senator Desruisseaux: Have some member companies merged? Would they be thinking along those lines?

Mr. Macdonald: I know of one instance where one member merged with one or, perhaps, two others. I do not question at all, in the event of an acquisition of that kind, that it should be regulated in the same way as the acquisition of a manufacturing plant. What we are saying is that their daily business is buying and selling real estate.

Senator Laing: I presume, for the most part, that all this money, making an allowance for the odd farm that is purchased, and so on, will be invested in the urban areas of Canada.

Mr. Macdonald: This is the industry we are talking about.

Senator Laing: The demographers are telling us that by the end of the year 2000, 94 per cent of Canadians will be living in settlements of 50,000 or more. Can you give me an idea as to why these areas, where the bulk of the wealth of Canada lies, are poverty stricken? That is either true or false, but they say there are poverty stricken. The cities are poverty stricken.

Mr. Macdonald: That is a bit too much for me to tackle.

Senator Laing: The civic governments are in trouble. Why is that?

Mr. Hay: I think there are a number of cities which have problems in their older sections, but they are gra-

dually being redeveloped. Ottawa is a prime example with respect to the redevelopment of the core area. In 1957 the city of Montreal went through a major redevelopment, and the same has also taken place in Toronto. I think this is going to happen in most cities. Does that answer your question?

Senator Laing: Has the financial position of any of these cities improved as a result of this redevelopment? They claim they are worsening.

Mr. Macdonald: As compared to the status of a good many American cities where they complain about the deterioration of their core areas, I think, Canadians have preserved the core of their cities to a far better extent.

Mr. Pacaud: Perhaps I might just add something to that, Mr. Chairman. Any redevelopment of an older section or the core of the city will increase the tax base and, to that extent, the municipality gains more revenue. Our position, of course, is that it is of benefit.

Senator Cook: The real problem here, is it not, is the fact that the costs of too many services are thrown on the property tax? The property owner can only pay so much tax. He has to pay the federal government, the provincial government, the municipal government. I speak as a person who used to be deputy mayor and was defeated in an attempt to be elected mayor, so I know all about it.

Mr. Pacaud: That view has often been voiced.

Senator Cook: The civic governments do not have sufficient money to provide all of the services the citizens want, and the reason they do not have it is because it is too much to be added on to the property taxes.

The Acting Chairman: On behalf of the committee I want to thank Mr. Hay, Mr. Macdonald and Mr. Pacaud for having appeared here this morning and for their very able and interesting presentation.

Before we adjourn, the Clerk advises me that on Wednesday next, June 20, at 9.30 a.m. the Honourable Alastair Gillespie will be appearing before the committee, followed by officials from the Province of Ontario. On Thursday, June 21, we will have Sinclair Radio Laboratories Limited, and the Federated Council of Sales, Finance Companies, and, perhaps, one or two others.

Mr. Macdonald: May I say something, Mr. Chairman?

The Acting Chairman: Yes.

Mr. Macdonald: I hope this will not be too far out of line, but I have always been very proud of the fact that my grandfather was a member of the Senate and this is the first opportunity I have had to address a Senate committee. I hope it will not be my last. We all very much appreciate having had this opportunity.

Senator Connolly: Who was he, Mr. Macdonald?

Mr. Macdonald: William Kerr. This was long before the time most of the senators here were born.

Senator Connolly: Well, some of us are pretty old.

Mr. Macdonald: Ontario.

Mr. Macdonald: It was back in Sir Wilfrid Laurier's time.

Senator Cook: He is probably looking down at you now with approval.

Senator Connolly: And what province did he represent?

The Acting Chairman: Thank you, gentlemen.

The committee adjourned.

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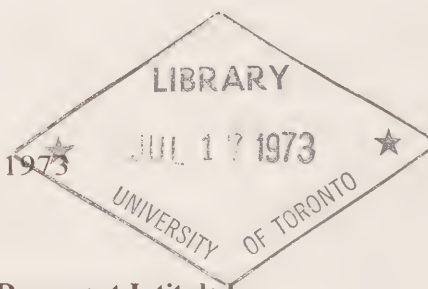
FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
**BANKING, TRADE AND
COMMERCE**

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 11

WEDNESDAY, JUNE 20, 1973



Sixth Proceedings on the Examination of the Document Intituled:

“Foreign Direct Investment in Canada”

(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	* Martin
Cook	McIlraith
Desruisseaux	Molson
* Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

Ex Officio Members: Flynn and Martin

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 16, 1973:

"The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the document entitled "Foreign Direct Investment in Canada", tabled in the Senate on Monday, 15th May, 1972, and the subject-matter of any bill arising therefrom in advance of such bill coming before the Senate, or any other matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, June 20, 1973.

(11)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to examine and consider the document intituled: "Foreign Direct Investment in Canada".

Present: The Honourable Senators Hayden (*Chairman*). Beaubien, Blois, Connolly (*Ottawa West*), Cook, Desruisseaux, Flynn, Gélinas, Laing, McIlraith, Molson, Smith and Walker. (13)

Present, but not of the Committee: The Honourable Senators Lafond, Manning, Heath and former Senator Leonard. (4)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Messrs. Charles Albert Poissant, C.A., Charles B. Mitchell, C.A., Robert J. Cowling, Consultants.

The following witnesses were heard:

Topping Electronics Limited:

Mr. F. W. Topping, President.

Province of Ontario:

Honourable W. Darcy McKeough, P.C.,
Parliamentary Assistant to the Premier of
Ontario—Head of Delegation.

Ministry of Consumer and Commercial Relations:

Mr. C. Salter, Q.C.,
Executive Director.

In attendance:

Province of Ontario:

Mr. Russell D. Rowe, M.P.P.' Chairman,
Ontario Select Committee on Economic
and Cultural Nationalism.

*Ministry of Treasury, Economic and Intergovernmental
Affairs, Policy Planning Branch:*

Mr. D. E. Redgrave, Director;
Mr. Frank Swift, Economist.

Ministry of Consumer and Commercial Relations:

Mr. J. Gough, Senior Legal Officer;
Mr. Paul Little, Assistant to the Hon. McKeough.

At 12.30 p.m. the Committee adjourned until 2.30 p.m.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, June 20, 1973.

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the document entitled "Foreign Direct Investment in Canada."

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, I should outline today's program. This morning Mr. F. W. Topping, President of Topping Electronics Limited, is present to make a presentation. At 11 o'clock we will hear a delegation from the Province Of Ontario, which will be headed by the Honourable W. Darcy McKeough. That will complete today's hearings in relation to the take-over bill. Approximately three groups who are not available today will attend tomorrow morning.

At 2.30 this afternoon we will proceed with the consideration of the tax bills, C-192 and C-193. I have arranged for Mr. M. A. Cohen to be here, together with a senior official of the Department of National Revenue, as it is a matter of regulations which they will administer and we would like to hear their approach. I knew that honourable senators would agree with me that we should not lose a whole afternoon, so we will complete the consideration of one of the tax bills this afternoon and make some progress on the other. To provide legal assistance Mr. Tom Gillespie, of the Ogilvy, Cope firm in Montreal, will be here this afternoon, as will our tried and trusted friends, Mr. Albert Poissant and Mr. Charles Mitchell. That is as much as I can tell you at the moment. It is expected that the House of Commons will complete its consideration of the tax bill on Friday.

Senator Connolly: Is that the personal income tax bill?

The Chairman: It is Bill C-192; no, the other one, with a simple amendment I understand.

Senator Molson: The corporation tax bill?

The Chairman: You will notice my language when I made the statement to you, "It is expected . . ." That is the manner in which it was stated to me.

Senator Molson: What is the situation with respect to the personal income tax bill?

The Chairman: There do not appear to be any serious objections there so far, but they can develop at any moment.

Senator Molson: That is in the committee of the Commons now.

The Chairman: Yes, the Committee of the Whole. We will be prepared and knowledgeable with regard to these bills and ready to proceed when they arrive here.

Mr. Topping, would you please come forward?

Mr. Topping, for the purposes of the record, before you start into your brief, you might tell us who you are, your background and your business.

Mr. F. W. Topping, President, Topping Electronics Limited: Mr. Chairman and members of the committee, in the introduction of my brief I summarize what I have done and roughly who I am. I have been in business as an independent Canadian for about 17 years, and I have been associated with the electronics industry in this country since about 1942. I am a graduate engineer, as you can tell from my blue shirt!

Senator Walker: Mr. Topping, we would admit your pre-eminence. Do we need any more build-up about your record? We accept that.

The Chairman: I was wondering about the nature of his work.

Senator Walker: But he was not speaking about that.

Mr. Topping: We design and manufacture specialized electronic equipment for industry. We have done considerable work for the federal government in Canada. We have designed and manufactured equipment for the American government; and, generally speaking, we are a creative company. We own a number of patents in the electronics field. We are a small manufacturing company. I have had as many as 35 or 40 employees. At the present time we have about 15.

Senator Laing: What are your sales?

Mr. Topping: In the order of \$300,000 to \$400,000 a year.

Senator Walker: Your sales?

Mr. Topping: Yes.

Senator Walker: Your gross?

Mr. Topping: That is gross sales.

Senator Connolly: Are you a company that can grow?

Mr. Topping: We can.

Senator Connolly: What inhibits growth? Is it competition or is it capital?

Mr. Topping: I would say that the economic climate in Canada is not conducive to the growth of Canadian-

11 : 5

owned corporations; that is to say, the general climate. Purchasing policies at all levels of government tend to put us in open competition with the rest of the world. There seems to be no impetus behind the Canadian-owned segment of the economy.

Senator Connolly: Are you arguing, in that statement, for a tariff?

Mr. Topping: No, I am not arguing for a tariff.

The Chairman: What would you expect the Canadian economy to do for you?

Mr. Topping: I think some of the moves could be similar to those in the United States. For example, in the United States they do not have a foreign ownership problem, but they have preferences for small businesses. In Canada I believe the majority of Canadian-owned corporations are small businesses. Therefore, similar preferences could be shown here in terms of purchasing policies.

Senator Connolly: By whom?

Mr. Topping: Certainly government agencies.

Senator Connolly: They are not the big purchasers.

Mr. Topping: In my type of business they have been substantial purchasers. At the moment I am doing very little business with the government.

Senator Walker: Is that why you are here, because you are not getting enough business from the government?

Mr. Topping: No. I became seriously concerned about this problem many years ago, as I think I have stated in an attachment to my brief. Studying the statistics, I find that the Canadian-owned segment of the economy is employing approximately 80 per cent of all those employed in Canada, but the Canadian-owned segment of the economy is not sharing equally in the profits. The trend is worsening. The profits are residing something in the order of 80 per cent with foreign-controlled corporations in Canada. I think this is almost a desperate situation. Your Canadian-owned corporations are employing the majority of Canadians, and your foreign-controlled corporations are getting all the profits or a large percentage of them.

Senator Connolly: Is that not simply due to the fact that Canadian-owned corporations have not access to new technology, and technology has to be imported in order to have these Canadian companies compete?

Mr. Topping: I do not agree with that.

Senator Connolly: Would you explain?

Mr. Topping: Why I do not agree?

Senator Connolly: Yes.

Mr. Topping: First of all, there is no question in my mind, and in the minds of other people, about the ability of Canadians to develop technology. Alexander Graham Bell financed the first hydrofoil developments in Nova Scotia at the turn of the century. There are any number of Canadian developments which somehow or other seem to slip out of our hands, like the electron-microscope development at the University of Toronto exploited by RCA in New York. There are numerous examples of Canadian

technology being as good as any other technology. I do not believe that it has to be imported; I think we can generate it ourselves.

The Chairman: I take it you are talking about the existing non-resident competition, non-resident capacity, and non-resident-owned companies and the competition that you have to meet from them.

Mr. Topping: That is partially the problem.

The Chairman: If competition with the non-residents is a problem that you have today, it must be in relation to those companies of that sort that exist.

Mr. Topping: Let me say this: the non-resident or foreign-controlled corporation in Canada, in my experience, has a tendency to octopus or spread sideways throughout the whole of the industry.

The Chairman: You are missing my point. My point is that the competition you are talking about is the existing competition.

Mr. Topping: I do not think I brought up the subject of competition.

The Chairman: I understood that you were not able to share in government contracts due to competition.

Mr. Topping: No.

The Chairman: That the Canadian government went all over the world looking for price, and I take it that would include getting prices from your Canadian competitors.

Mr. Topping: Yes.

The Chairman: Are you complaining about the price generally that they might get from Canadian-owned or from any operations in Canada?

Mr. Topping: What I am saying is that I believe that if we are going to do something about building our own country, I believe that preferences should be shown to the Canadian-owned segment of the economy. These preferences should be shown not only by the purchasers but by bankers and in the Income Tax Act. All of these things should be legislated.

The Chairman: Now you are getting outside the field of our consideration. We are considering this takeover bill, its application to the establishment of new businesses, and its relationship to what is called the establishment of unrelated companies.

Mr. Topping: I am opposed to this bill.

The Chairman: Now we are getting down to the business of the meeting. Why are you opposed to it?

Mr. Topping: I am opposed to it because I do not believe it will do any good for the Canadian-owned segment of the economy.

The Chairman: Why?

Mr. Topping: First of all, I believe it is unworkable. I have tried to give some nuts-and-bolts examples of why I believe it is unworkable. I do not think you are going to be able to establish control of corporations by percentages or share ownerships. I do not believe it can be done that way.

I have an example in my brief where 3 per cent foreign interest, that is to say 3 per cent share ownership, represents effective control of a Canadian corporation. So I believe the percentage method will not work. I also think that putting obstacles in front of foreign investment is not the way to encourage or build the Canadian segment of the economy.

Senator Connolly: This seems to be a contradiction, because you say that 3 per cent foreign ownership could mean foreign control; yet you do want more foreign investment in Canadian business.

Mr. Topping: I did not say that. I do not believe we need more foreign investment in Canadian business. It is Canadian money that is currently being invested in foreign-controlled business. I do not believe that placing obstacles in front of the foreign-owned segment is going to help the Canadian-owned or Canadian-controlled segment.

Senator Cook: That goes to the philosophy of the bill. Having read your brief, it seems to me that your main argument is that there is not enough encouragement for Canadian companies. As the chairman pointed out: unfortunately, that is not what we are concerned with in this bill. While I might agree with you, Mr. Topping, that is not what this bill is about. This bill is on the negative side, as you pointed out. The positive side, really, is a matter of government policy, is it not? I am not criticizing your point of view. What I am saying is that this particular meeting on this particular bill is not the forum before which to bring forward those ideas.

Mr. Topping: I felt, senator, that if I was going to oppose the bill I should offer something constructive as an alternative.

Senator Connolly: And your constructive argument would mean a change in policy which would involve the encouragement of Canadian-owned businesses which, as you describe them, are mainly small businesses, in the way of preferences, subsidies, tax concessions, and instruments of that kind, so that these Canadian businesses could develop and compete with the foreign-owned businesses in Canada in the same field.

Mr. Topping: Yes, senator. I believe that if we build a sufficiently strong Canadian-owned business base we will then be able to be effective as exporters. I do not think we can be effective as exporters until we have a strong industrial base of our own.

Senator Connolly: When you say "we", you are still talking about small Canadian-owned businesses?

Mr. Topping: Not necessarily small. I think the matter of small businesses is another subject. If we are going to define small Canadian-owned businesses I would say it should not be in terms of dollar sales. Perhaps the number of employees could be the criterion. One hundred employees, or less, would be a small business.

Senator Connolly: But you would agree that, apart from the question that you describe as the domination of Canadian secondary industry by foreigners, when it comes to exports it does not matter, from the point of view of trade and gross national product, whether the products that are competing on the world market and

which are in the export field are foreign-owned or not; they are still producing revenue for the Canadian-based operations and they are good for our exports?

Mr. Topping: I assume they are. However, if the Canadian-owned segment of the economy is employing 80 per cent of the labour force, then I would have to guess that 80 per cent of the federal tax revenues derived from the Canadian-owned segment would be better if the Canadian-owned segment was exporting.

Senator Connolly: That is a good point. It is another consideration, though, from the consideration that is before us in this bill.

The Chairman: Mr. Topping, I understood you to say that you are opposed to this bill.

Mr. Topping: Yes, Mr. Chairman.

The Chairman: Do I take it that that means that you are opposed to the method of attempting to Canadianize future industrial and economic development in Canada by the method of putting restrictions and limitations on takeovers of Canadian businesses by foreign interests. Are you opposed to that?

Mr. Topping: I think I am opposed to this bill because I do not believe it will accomplish anything.

The Chairman: Then you do not think that the takeover principle which is asserted in this bill will be effective?

Mr. Topping: I do not think so, no, Mr. Chairman.

The Chairman: What reason do you have for saying that?

Mr. Topping: I think it is virtually impossible to define foreign control in terms of percentages of shares or stock in a company. I just do not think it is workable. If a definition of foreign control of a corporation is required, then I would suggest that Canadian citizens who are directors of these corporations make a declaration every year under the Income Tax Act as to where the power of control lies. These are the men who have the power to hire and fire people, and to authorize the purchase of a \$100,000 machine.

If we are going to define control, we have to define it in a way that will be effective. I do not necessarily mean that we should define it for the purposes of this bill, but I believe it will have to be properly defined.

The Chairman: The moment you use the word "properly" indicates that you must have some concept in your mind as to what would be a proper and effective method of defining control.

Mr. Topping: Yes, Mr. Chairman. I believe that a declaration under the Income Tax Act by two Canadian directors of Canadian corporations to the effect that the company is or is not a Canadian-controlled corporation would be effective.

Senator Connolly: Do you think that they would have control if they were only two members of a larger board?

Mr. Topping: Well, it does not matter. They would know where the power lies in the corporation.

Senator Connolly: Their position would be rather invidious.

Mr. Topping: My concept is that we define a Canadian-controlled corporation in order to benefit under Canadian law for certain preferences for the Canadian-controlled segment of our economy. If a corporation is going to take advantage of these benefits, then they must make a declaration and someone must be personally responsible for the truth of that declaration. I believe that two Canadian citizens who are directors of the Canadian corporation should make a declaration under the Income Tax Act, which is subject to verification and penalties if the declaration incorrectly states the situation.

The Chairman: If I understand you correctly, then, if that is done or required, the takeover provisions in this bill would be effective and would work. Is that your position?

Mr. Topping: If this bill is going to go ahead, that would be one way of defining foreign control. However, I still have to re-emphasize that I am opposed to the approach. After all, the Americans, or whoever invested in this country, did not do so in order to take mean advantage of us. We left the situation open for them to come here. I do not think they should be unduly penalized.

The Chairman: What you are really saying, then, is that incentives should be provided by the government for the development of Canadian-owned businesses.

Mr. Topping: Yes, Mr. Chairman.

Senator Walker: And by that you mean subsidization?

Mr. Topping: I would not say subsidization. I think the word has a bad connotation. My position is that we should show our Canadian-owned segment some preferences.

Senator Connolly: You will admit, though, that there are a great many such incentives. For example, on foreign aid, I understand there is a declaration required of all the people who bid as to the extent of their Canadian ownership and control. There is a very definite preference in that respect. If it is a Canadian-owned and controlled corporation, then it is put at the top of the list if, indeed, foreign-controlled companies are not excluded altogether.

That kind of thing has been done in other areas apart from this bill. You must realize also that so far as small businesses are concerned, the corporate tax rate is a great deal lower than that of, let us call them, large Canadian enterprises.

Those two examples, I think, are an indication of the fact that there are incentives available. What further incentives do you advocate? We are not trying to make it difficult for you. We are trying to pick your brains on this.

Mr. Topping: I appreciate that, senator. The first point you brought up in your question was the matter of preferences that may or may not require a statement of ownership. I have not seen any of these. They may exist. I am certainly very encouraged by this trend. However, I am not aware of any legislation—and I think legislation is the only way to ensure these results permanently—which distinguishes or attempts to show preferences to the Canadian-owned segment of the economy.

I hear rumours that a 10 per cent premium may be granted in some cases by the Department of Supply and Services. However, it is quite discretionary on the part of the Department of Supply and Services officers as to whether they apply this 10 per cent premium. In that

regard, I would say that a 30 per cent premium, even on the basis of tax revenue to the federal government, would still be of benefit to Canada. I suppose here I am talking about imports versus Canadian-made, but a 30 per cent premium to Canadian manufacturers, I think, would be viable.

Senator Connolly: That is equivalent to a tariff.

Mr. Topping: No, I think it is a preference for our own country.

The Chairman: With respect to many of the subsidies which the Canadian government grants, one of the requirements is that to the extent that materials are available in Canada to do whatever the particular job is, they must be purchased in Canada. You do realize that?

Mr. Topping: No. I have never had a subsidy.

The Chairman: I am not asking you whether or not you have ever had a subsidy. Do you not realize that that is one of the requirements laid down by the Canadian government in respect of subsidies?

Mr. Topping: I have tendered requirements where they inquire as to the Canadian content. Whether a Canadian content of 50 or 75 per cent is acceptable, this, again, is discretionary. Again, I do not believe any of this has been legislated. I believe it is rather arbitrary. I do not think it is a matter of law.

Senator Molson: You have provincial discrimination in many cases in purchasing, where they try to get materials or products manufactured within the provincial boundaries. This is the same principle that you are talking about. That does exist.

Mr. Topping: I am very encouraged by recent trends. I think things are coming along.

Senator Connolly: Surely, that is not a good trend though, is it?

Mr. Topping: Why not?

Senator Connolly: I do not think we answer questions here; we ask them.

Mr. Topping: I am sorry.

Senator Connolly: Would you think that a provincial law that gives a preference to a provincial manufacturer is desirable in a federated state like ours? For example, if Ontario says, "We won't give a contract for the supply of certain goods required by a government department unless they are manufactured in Ontario," or if Quebec does the same thing—

Senator Laing: Quebec does the same thing.

Senator Connolly: I am just putting a hypothetical question. Suppose that were done, do you think that is a good thing for a federated state?

Mr. Topping: I do not know about that, sir, but I will say that if my tax money is being paid to the provincial government I would expect a slight preference if I reside in the province.

Senator Connolly: That is a sort of dog-in-the-manger attitude, isn't it?

The Chairman: Senator, I think we are a little far away from the subject.

Senator Laing: Mr. Chairman, I think you are going to call me far away, too. I think, Mr. Topping, I could describe you as a Canadian nationalist. I think you would be one of these people who would advocate or lead a campaign to buy Canadian first. Am I right? Yours is that kind of thinking?

Mr. Topping: Yes, sir.

Senator Laing: Therefore, if we are going to make improvements in this field, you would be in favour of not punishing the outsider but assisting the insider. Is that not your view?

Mr. Topping: That is my view.

Senator Laing: You say that we have been foremost in a number of areas. I am told that in your own area we are quite excellent in Canada, but I would ask you to explain to me why in the equipment field we are bringing in about 80 per cent Japanese goods at the present time. Is that because of labour? Why are they able to take this business away from us?

Mr. Topping: Mass marketing, I think, is a bit of a trite answer. I am not now speaking of domestic electronics; I will speak of the area I am more involved with, which is, for example, specialized test equipment. Whereas a Canadian requirement might be as many as 100 or even 500 units, a world requirement might be as many as 5,000 or 10,000 units. A country that is organized, that has the industrial and financial base and the world marketing expertise, such as Japan, can say, "We are going to market this throughout the world through our marketing agency. We are going to back it with the Japanese government and the Japanese industrial fund." I think they are in a position, merely on the basis of scale and their ability to export throughout the world, to come in here at much lower prices on many of these things. Actually, it is happening daily.

Senator Laing: I have described myself as a farmer. I know a few things about farming. At the present time the farmers of Canada are being heavily discommoded by inefficient farm machinery. I know this from common knowledge. There are tractors today in the Peace River area that work for four hours and the bearing goes. There are other tractors for which parts have to be obtained. They go first to Edmonton; the parts are not available there. They go to Toronto; the parts are not available there. They have to come from the United States parent company factory. Is it because of our scale? What is wrong with us that we have this sort of condition? A \$22,000 tractor lay dormant for 14 days until the parts came in, yet it was only one week old.

Senator Molson: Made where?

Senator Laing: Made in Canada.

Mr. Topping: I think you are right, senator; it is a matter of scale. I would like to touch on the banks, for example. I think our scale will remain small until we do something to inject growth into the Canadian segment of the economy. A company the size of mine is not in a position to inventory spare parts for every product we manufacture. Therefore, when a customer comes to us for spare parts, it

sometimes takes us eight weeks to manufacture the spare parts. There is little enough working capital anyway; you cannot have it tied up in inventory for spares, although in my own mind you should always have these spares to service your customers. The bank is not going to advance you money to inventory spares.

The Chairman: You are not opposed then—or are you—to the establishment of non-resident owned companies in Canada?

Mr. Topping: Opposed to the establishment? I think we have enough, more than enough.

The Chairman: But you said you were against the bill, and the bill would restrict the establishment of non-resident owned companies in Canada.

Mr. Topping: I do not think it would, sir. I think it says that it would only restrict investors. Is that not right?

The Chairman: If a non-eligible person, under the bill, were proposing to establish a new business in Canada, he would have to clear himself under this bill and establish that the business would be of significant benefit to Canada. Is that not right?

Mr. Topping: I am not quite clear on that point, sir.

Senator Connolly: You can take it that that is the situation.

Mr. Topping: I think that if he wants to establish a business with gross sales of under \$3 million the bill has no impact on him whatsoever.

The Chairman: I was not discussing that. I was assuming there was a level where this principle would apply. They have an exemption. If you have not more than \$250,000 gross assets and \$3 million or \$3½ million of gross revenue, you do not have to apply to this board of review. Above that, you do have to apply, and you do have to establish that the business will be of significant benefit to Canada.

Mr. Topping: Here again, I take exception to the bill, sir. Perhaps it is only because I live in this area and I have a number of friends who have been here. If you are considering foreign control, foreign investment or foreign ownership, or the need for capital, or the need to go outside the country to obtain this capital, then a \$500,000 sales level is one of the peak demand points for a company, so I disagree with the bill. If the bill were to be effective, those limits are far too high in terms of a sales line.

The Chairman: I am just thinking out loud in terms of the Churchill Falls development, for instance. It was almost a world consortium that provided the moneys required, and I suppose you would certainly admit it has produced benefit for Canada.

Mr. Topping: But is it in equity or is it in debt?

The Chairman: Both.

Mr. Topping: Provided the control stayed in Canada, I have no objection to borrowing any amount of money in the form of debt from anywhere.

The Chairman: I do not think you are answering my question.

Mr. Topping: I have not said that foreign investment has not been of benefit to Canada, sir.

Senator Connolly: Take the Churchill Falls example that the chairman gave you. Surely the advantages to Canada as a whole from the project, whether it is foreign owned or domestically owned, are very great?

Mr. Topping: Are we to do this with all our natural resources and accrue all the profit in the country to foreign controlled corporations? Perhaps on a specific item you are correct, but I do not think we can continue to do that.

Senator Cook: It is only fair to say that the foreign corporations get only half the profit.

The Chairman: You being from Newfoundland, Senator Cook, this is very dear to your heart, of course. It would appear, then, Mr. Topping, that your one objection is that Canadian earned money by a non-eligible person passing in the form of dividends outside of Canada is to be decried, but it is perfectly all right for Canadians to hold investment in foreign companies and bring income into Canada. Is that right?

Mr. Topping: No, I do not believe I said that, sir. I said I am opposed to the bill because it is proposing to put stumbling blocks in front of foreign investment and it is proposing to extend government interference in private industry. I am opposed to it on those two grounds. I think we might be inviting penalties, to pass this bill, in other countries.

Senator Connolly: I do not like to make it hard for you, but—

Senator Cook: I think we have Mr. Topping's views pretty clearly.

Senator Connolly: We understand that you are opposed to government interference in private business. But a few moments ago what you told us was that you want more government stimulation in private business. I know that you get into these inconsistencies in general argument, but here it is pretty obvious.

The Chairman: Senator Connolly, I think the witness has answered as to what his point of view is, when he answered Senator Laing, that he could be described as a Canadian nationalist.

Senator Cook: There is nothing wrong with that.

The Chairman: The question is: What is a Canadian nationalist? I should tell the committee that next week we are going to have before us the Committee for an Independent Canada.

Senator Laing: Are they nationalists?

The Chairman: I would expect so, yes.

Senator Cook: When is the Communist Party coming? We have a brief from them, too.

The Chairman: They have not indicated when they are coming.

To get back to Mr. Topping's position, he is against the bill. Whether his reasons stand up or not, or are adequate, or whether they are even illogical, he is against the bill.

But he is against the bill because it would put blocks in the way of foreign money operating in Canada, as I understand it, and he thinks the government should give incentives to Canadian industry. Now, is that putting it in a nutshell?

Mr. Topping: Yes, sir.

Senator Walker: We are glad to have heard his view, Mr. Chairman. Thank you very much.

The Chairman: Are there any other questions by members of the committee? Are there any further points you want to develop, Mr. Topping?

Mr. Topping: There is one more point, with respect to banking.

The Chairman: Go ahead.

Mr. Topping: One of the reasons why we hold more adventurous foreign money in Canada may be the affluence of corporations in savings. For example, in the United States it may be that they are in a better position to take a chance, as one million dollars means only one-tenth to them of what it means to us. Another point is that the Canadian banking system is a rather tied group; they all seem to operate pretty well in the same way.

The Chairman: You acknowledge that it is the best banking system in the world?

Mr. Topping: The Canadian?

The Chairman: Yes?

Mr. Topping: I am not an expert on banking, but the American banking, it strikes me, tends to be a little more inclined to take a few more chances.

The Chairman: You think that is good?

Mr. Topping: It seems to work very well for the United States economy.

The Chairman: They have failures.

Mr. Topping: I suppose that is to be expected.

The Chairman: You do not have them in Canada.

Mr. Topping: Oh, yes, we do; we certainly do.

The Chairman: We have not had a bank failure in Canada since 1923.

Mr. Topping: Oh, a bank failure, I did not mean the banks, but the businesses that they might lend money to.

The Chairman: Oh, well.

Mr. Topping: What I was going to say about the banking is that it seems from the figures I have obtained—and I have obtained them from the United States Bureau of Statistics, the United States Department of Commerce, over the years—that the financing of foreign controlled corporations in Canada is done as to about 30 per cent by Canadian financial institutions. They are using Canadian savings to finance foreign controlled corporations' operations here.

Senator Laing: Why?

Mr. Topping: I think they would perhaps prefer to make a loan of money to General Motors than to Topping Electronics. It may be a matter of scale.

Senator Laing: I could give you examples in the province of British Columbia where the banking interests did not trust the Canadian entrepreneur to do a good job, but they would trust the American with his knowledge.

Mr. Topping: I do not know why that is.

Senator Laing: This is a fact.

Mr. Topping: I find it quite discouraging. My point about banks is this. I believe that the Canadian government has enacted legislation to protect Canadian financial institutions from foreign competition, in terms of the amendments to the Bank Act several years ago, where no bank may have more than 25 per cent foreign ownership. The Canadian public having given the banks this mandate, I believe the banks should turn around and give something back to the Canadian government. I believe the Bank Act should be amended to require the banks to advance a certain amount of money to Canadian controlled industry.

The Chairman: Mr. Topping, you are in the wrong place in presenting that argument—not because of any views that the members of the committee have, but because it has nothing to do with the bill.

Senator Walker: Perhaps later on, when we have something along the line that you are discussing, we will be happy to have you again.

The Chairman: The Bank Act will be along again for review in a couple of years.

Senator Walker: Most of what you say is irrelevant, but we are glad to hear you, nevertheless.

The Chairman: When that review occurs, that would be the time to make the kind of recommendations you are making now. To follow your recommendation, we would turn down this bill because under the bill the banks are not directed by statute to loan money to any Canadian owned operation that needs money in order to operate.

Mr. Topping: There would have to be some reasonable limit. You could not have irresponsible people applying for funds and then insisting on getting them.

The Chairman: Yes. Don't you think that where loans are refused to a Canadian owned business, it may be a factor for the refusal that there is irresponsibility or that the security is not there, or that the managerial know-how is not there? Don't you think those may be the grounds?

Senator Cook: There is one thing too, Mr. Topping, that in most cases, if the ordinary chartered banks—who, of course, deal with their depositors' money—feel unable to lend, there is a bank of last resort, the Industrial Development Bank, created for that very purpose. A Canadian businessman has recourse to the Industrial Development Bank and can get his money there, or should be able to do so.

Mr. Topping: In my experience, until very recently—and I have dealt with the Industrial Development Bank—I have been discouraged quite strongly by them in terms of applying for working capital. Up until very recently I think they were concentrating only on taking back a mort-

gage on a piece of equipment, as many other lenders would do. However, I am gathering courage in that I believe that the Industrial Development Bank now will advance some working capital.

Senator Cook: I think they were pretty rigid, but that they are now disposed to do so, in appropriate cases. They, too, exercise their own judgment, of course.

Mr. Topping: I am very pleased by this sort of thing.

Senator Laing: I am glad we are giving Mr. Topping as much time as we are, because I think he is representative of a very large number of Canadian companies. A very large number are about his size, and I would think that they have the same kind of—

Senator Cook: Frustrations.

Senator Laing:—frustrations as he has. I think so, and therefore it is very important that we hear him through. They do not know where they are going, probably because of the restricted market here at home, the inability, because of wage rates and other things in Canada, to compete with foreign markets and struggling to get that \$300,000 in sales up to \$3 million. What can we do to help in this kind of thinking? He is a man who, I would have thought, would be in favour of this bill, yet he comes and tells us he is against it. I am now of the opinion that probably a great number of Canadians are in the same position as he is, that they have the same attitude towards the problem.

Senator Cook: He is mainly against the bill, not for what it does but for what it does not do. In other words, his main thrust is that there should be more encouragement for Canadian business. He is not worried about obstacles in the way of foreign business.

Senator Laing: He wants it positive, not negative, am I right?

Mr. Topping: Yes, sir.

The Chairman: Senator Laing, as you know, in the other place, in developing this bill on second reading, the minister indicated that there was a package of goodies in the form of many varieties of incentives that would follow the enactment of this bill. The only concern I have—and Mr. Topping has not been able to help me—is the correlation between this package of incentives for Canadian-owned business and the contents of this bill.

Senator Cook: We have agreed that there is not.

The Chairman: This is the thing that is puzzling to me.

Senator Laing: Have you had any PAIT grants?

Mr. Topping: I have not had PAIT grants, but I have applied under IRDIA. I see no distinction between Canadian-controlled corporations and any other corporations, but I believe there should be.

The Chairman: Do I conclude, then, that what you are saying is that a program of incentives is not an answer that will support the contents of this bill? A program of incentives offered to Canadian-owned industry is not an answer which would justify the passage of this bill?

Mr. Topping: I agree with that, sir, yes.

The Chairman: You do?

Mr. Topping: I was just going to say that I believe that the method of attempting to determine what is a Canadian-controlled or foreign-controlled corporation under this bill is, in my opinion, entirely ineffectual. The very best that can be said for it is that this bill is a placebo; and the worst that can be said for it, I do not know. I am a positive thinker.

The Chairman: Senator Laing, you thought that we should probe into this question of frustration, but I feel the witness has given us the answer.

Senator Laing: Yes. I am very interested in what Mr. Topping has told us, and I think he probably represents a great body of small Canadian companies.

Senator Cook: We know he does.

The Chairman: It would appear that he agrees that the relief of those Canadian companies does not appear in this bill so far as he is concerned.

Senator Laing: That is right.

The Chairman: Are there any other questions? Are there any other points that you want to develop, Mr Topping?

Mr. Topping: I think I have said quite enough, Mr. Chairman.

The Chairman: Let's not put it that way. You have answered our questions, and I just wanted you to feel that you had developed the points you came here to develop.

Mr. Topping: Thank you, sir.

The Chairman: Thank you, Mr. Topping.

The Chairman: Honourable senators, we now have Mr. W. Darcy McKeough, who is leading the Ontario delegation. Mr. McKeough is going to make the opening presentation.

Hon. W. Darcy McKeough, M.P.P., Parliamentary Assistant to the Premier of Ontario: Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, first of all let me apologize for the delay in getting the brief to you. I see that it is in front of you and perhaps I could just make a few remarks, substantially the same remarks as those I made to the committee of the other place yesterday, which touch on some of the highlights of the brief.

We commend the decision of the Government of Canada to develop a more comprehensive foreign investment policy. We support the introduction of the foreign investment review bill as an important step in providing the administrative machinery for review of designated types of foreign investment. We can, however, only regard the bill as a tentative first step in achieving national objectives.

The Government of Ontario has consistently maintained that the prime responsibility for the development of a foreign investment policy in Canada rests with the federal government. However, the Government of Ontario believes that the provinces should take an active part in the development of national policy in this area.

I think our record in this whole matter is clear. We have contributed to the public discussion of the foreign investment issue, first of all, with the Provincial Conference on Economic and Cultural Nationalism, which was held in June of 1971, and also with the publication of the report of the Interdepartmental Task Force on Foreign Investment, which was in November of 1971. We also appointed the Select Committee on Economic and Cultural Nationalism, which published its preliminary report in March of 1972. The select committee is expected to present further reports to the legislature this session. I am pleased that Mr. Russell D. Rowe, MPP for Northumberland and the Chairman of the Ontario Select Committee on Economic and Cultural Nationalism, is with me today.

As I said, our position on this matter is clear. The premier has enunciated our position on several occasions on the subject of Canadian foreign investment policy. There are five points. We believe there should be more prominent Canadian participation in new enterprises. Canadians should be more prominent on the boards of directors of subsidiary firms in Canada. Means should be found to increase Canadian active participation in all Canadian based enterprises. We should encourage portfolio rather than equity investment from foreign sources. And there should be clear guidelines applied to the performance of foreign industry and unions in Canada.

We have moved to support Canadian interest in key financial, cultural and resource based sectors and to promote Canadian enterprise through provincial incentive and support programs. We have introduced Canadian residence requirements for directors of companies incorporated in Ontario, a move which I have to note in a somewhat partisan fashion. This was described by the then federal minister a year ago as being tokenism. This year his more enlightened government indicates that it will legislate the same thing.

Ontario's policy is to promote Canadian enterprise and to encourage sound corporate performance by the foreign owned sector in order to achieve Canadian economic and social objectives. We are committed to a positive role, and we reject the negative emphasis to date of federal policy. The primary objective of federal policy, in our view, within the proposed review process, should not be to restrict foreign investment *per se*, but to advance Canadian investment.

Just dealing with a few specifics in relation to the proposals of Bill C-132, the brief deals with the following. There should be close consultation with the provinces; that should form an essential part of the review process. The bill should be amended—and we have suggested to Mr. Gillespie some amendments—to require the federal government to provide the provinces affected with a copy of the notification and any additional information submitted by the investor, and to provide the provinces with a full opportunity to submit their views. I think we are one on that, and I hope there will be an amendment forthcoming which will clarify the intent of the minister's statements on this matter, which are not, in our view, completely reflected in the bill at the moment. There should be consultation with the provinces in review and development of future policies. There are two areas here; first of all, the specific cases, as they come forward; and, secondly, on-going development of this kind of policy. We hope

that there will be consultation with the provinces in this connection.

The provisions of the bill such as "significant benefit to Canada" and "unrelated business", do not lend themselves to precise definition. The federal minister should, therefore, issue precise guidelines which would allow for policy development according to Canada's economic, social and cultural needs.

Our brief emphasizes the importance of four key aspects of sound corporate performance by the foreign owned sector, and they are as follows: export development; purchasing of equipment and components in Canada; the processing of Canadian resources in Canada; and the development of research and development activities in Canada.

The bill must provide a statutory right of appeal to the courts in the case of any rulings or decisions under the act, including minister's rulings.

The Chairman: Did you say "including" or "excluding"?

Mr. McKeough: "Including."

The Chairman: I think the word used in your brief is "excluding," is it not? It appears at page 15 of the brief, near the bottom of the page.

Mr. McKeough: Yes, it says, "with the exception". I am sorry, you are quite right.

The Chairman: Which is it?

Mr. McKeough: "Significant benefit" is a cabinet ruling as opposed to a minister's ruling.

The Chairman: Well, we will have something to say about that later. What I am concerned with at the moment, just so that we are clear on this, is whether you think that the minister's decision, which takes the form of a recommendation to the cabinet, should be accompanied by reasons; and, if so, whether or not those reasons should be subject to some appeal procedure.

Mr. McKeough: We discussed this matter this morning, Mr. Chairman, and, of course, what we are worried about, and I am sure what you are worried about, is the confidentiality of the reasons. I think we are getting into a very grey area as to how much in the way of reasons can be given.

The Chairman: Can I illustrate to you what the thought of the committee is on this? Mind you, this is not a commitment by the committee in any way. It is just the thought that has been going through our minds. If the minister's answer is "No," he may or may not be within the factors that he must follow. How do I test it unless I have a right to know why he said "No"? I can go to the Governor in Council, but, as you know, the Governor in Council usually accepts the minister's recommendation.

Mr. McKeough: Not always.

The Chairman: I said "usually". You do not have to answer this right away, or you may not want to answer it at all, but we have been thinking a bit about the possibility of the minister having to give reasons so that the person affected would be able to determine whether those reasons are supportable, whether they are factually correct, whether they are wrong in law, and whether he has gone

outside the factors that he must follow. We thought that there should be the right of appeal—and this is a generality—to the Federal Court and to the Federal Court of Appeal from that decision.

The thing that concerned us is the fact of the court giving an order to the minister. Our feeling was that there seemed to be something incongruous about that, especially when he is exercising a discretionary authority. This would be a subjective judgment on the part of the minister. We thought the way in which that might be overcome is the way the Privy Council used to write its judgments, and still does, and that is that at the end they say, "We humbly advise Her Majesty thus . . . "and so on, and the form of their statement would be, "We humbly advise the Minister thus . . . "The minister can accept that or not, but I would think that, in the face of public opinion, with the knowledge that this was a recommendation, it would be difficult, or risky, for the minister not to follow that advice.

Looking at this from the point of view of political considerations—and this is a question I am asking you—do you see any objection to that kind of procedure?

Mr. McKeough: Not offhand. Let me, perhaps, come at it in a different way. Although we have made reference here to appeals, I think our underlying view would be that, particularly in the first couple of years, until both the federal government and the provinces get some experience under their belt, we would hope to avoid the courts, we would hope to avoid becoming too legalistic. I think we are going into uncharted waters; and, until we know where we are going, we do not want to see this sort of thing bogged down in the courts. I am sure you have heard a number of briefs, and will hear further briefs, saying that there should be a clear definition of "significant benefit to Canada." What does that mean? What does "related business" mean?

The Chairman: We will come to that in a minute. I am just sticking to this specific point. I think the bogging down process could be cured by the time limit put on the appeal.

Mr. McKeough: On the appeal?

The Chairman: Yes. I would even suggest, on the time within which the minister must make his decision. I think 90 days is too long.

Mr. McKeough: Agreed.

The Chairman: This is only a personal view. There is one way in which you could reduce the time—

Mr. McKeough: You could reduce the time the politicians and civil servants spend on it, but once you get into the courts it is beyond that.

The Chairman: Except if you provide for an appeal which must be taken within 15 or 30 days.

Mr. McKeough: I am not a lawyer, but I wonder about being able to say to the Chief Justice and to the lawyers, "We want agreement from you that you will go to court next month."

The Chairman: Oh no, we would not ask for an agreement; it would be statutory.

Mr. McKeough: That they have to appear in court next Monday and settle it?

The Chairman: If they did not exercise their right of appeal within 15 days, then their right of appeal would be gone.

Mr. McKeough: Their right of appeal, yes; but once it gets into court, how do you control it?

The Chairman: You do not, unless you also put a limit on the time within which the judges must deliver their judgment. These are not unusual steps.

Senator Walker: I think Mr. McKeough has a proper suspicion of the function of the courts and the manner in which they operate. They are abysmally slow, even when one tries to hurry them up. Have you any example, Mr. Chairman, of a bill which, when presented to the court for decision, had a provision in it that the court must give its answer within a statutory period? I am just asking. I have never heard of any.

The Chairman: I am sure there is, because I have had the question before. We had the question some years ago, when the government of the day was providing for independent action, without a right of appeal, by the Minister of National Revenue on certain customs matters. We inserted a time limit; we provided for a right of appeal. Then the answer was given that these things would not stand the usual time limits on appeal, so we inserted a very short period of appeal.

Senator Flynn: But it did not pass.

The Chairman: Quite true, it did not pass, but no objection was made to the insertion of the time limit; there was no question that there was anything illegal about it.

Senator Walker: If we had to depend on the courts for the government of our country, then God help us! The courts are abysmally slow and grossly inefficient.

The Chairman: What I have been doing is putting a proposition to Mr. McKeough, if he would care to answer it, based on the thinking of many members of the committee so far. I am looking for answers.

Senator Cook: There are two points here. The first is that this right of appeal would tend to make the minister, shall we say, a little more careful. Secondly, it would give the applicant something he has not got now anyway. In other words, in, I would say, 99.9 per cent of the cases it is an appeal against a negative answer. He has not got it now. Slow though it may be, it is something more than he has now. Also, it may serve as a precautionary measure to the minister, to make sure he has all the facts and has been properly advised in making up his mind.

Senator Walker: I agree with the chairman that there should be some clout, otherwise if the government says "No" there is no redress. The chairman is trying to assist Mr. McKeough in suggesting to us what they are going to do under those circumstances. Isn't that correct?

The Chairman: That is right.

Senator Walker: And whether there certainly is not in this brief any suggestion of a remedy. I appreciate the fear of the courts, but what are they going to do if the

government says "No" and it is vital to the interests of Ontario that the matter should have attention?

The Chairman: If the government says "No" and Ontario follows a course which would be interpreted as "Yes," if you do not have any remedy of the nature that I am suggesting, then you have bought yourself a lawsuit; if it is important enough to the individual or the corporation concerned they can challenge the constitutionality of the bill, and then you are in the courts for quite a while.

Senator Cook: When there is consultation between the province and the minister, that is all very nice; but what happens when they do not agree?

Mr. McKeough: What we have suggested does not use the word "consult." The wording we have suggested is that upon receipt of the notice the minister shall forthwith deliver a copy of that notice to any province likely to be significantly affected by the acquisition or establishment so notified. We are not using the word "consult," because I do not know what that means either. We do want to make it quite clear that notice has to go to the provinces. All the bill presently really says is that if the information is passed to the provinces they are not under the confidentiality clause.

The Chairman: If all this were granted by amendment to this bill, you still have not any sanction, as we call it. If the federal authority still says, "No," you have not any sanction to make your viewpoint enforceable.

Mr. McKeough: No, that is correct.

Senator Connolly: Other than a lawsuit.

The Chairman: Other than the constitutional question.

Senator Connolly: Yes.

Senator Walker: When you are dealing with the minister, Mr. Gillespie, it would be very easy for him to take an adamant position of "No". His character is constituted that way, so you are in for real trouble.

Senator Connolly: That is irrelevant.

Senator Molson: He is not here to defend himself.

Senator Connolly: There is a point here which I believe the committee has to consider. Assume that there is a strong desirability for a right of appeal. If this committee is going to recommend a right of appeal, we want to be sure that we are on firm ground. What we want to avoid is an attempt to insert a right of appeal from a discretionary order by the minister. It may even be that the order should not be made by the minister, but perhaps by some other agency, from which there can be an appeal without this difficulty arising.

The Chairman: The difficulty there is that the board of review is not the body that makes the decision. It is a sort of clearing house. It is the minister who makes the decision.

Senator Connolly: That is why I say that perhaps the appeal should be from the board rather than from the minister, to be on sound ground.

The Chairman: Then you are by-passing the minister.

Senator Flynn: The situation is more confusing than that.

Senator Connolly: Why have the minister in it at all? Perhaps that is the question.

The Chairman: That would overcome that problem.

Senator Flynn: The position is that there has to be an order in council, even if the minister recommends to the Cabinet approval or disapproval. The Cabinet can decide otherwise. This is the machinery provided in the bill. It is the order in council, and it does not say that the order in council shall be in accordance with the recommendation of the minister.

Senator Connolly: No, it simply gives the order.

Senator Flynn: Then where are you? If you want to have an effective right of appeal, it has to be from the decision of the government.

Senator Connolly: But it is still a discretionary order. I do not think Mr. McKeough wants to get himself into the position where he is advocating an appeal from a discretionary order, which the court may say, because it is discretionary, there is no appeal on. He wants to have a real appeal.

Mr. McKeough: I am not a lawyer. We are probably talking about two things. We are talking about an appeal on the facts. If we are talking about an appeal against the decision of the minister that it is not of significant benefit to Canada, then I do not think that is appealable; that is a political decision.

Senator Connolly: Whether it is political or not, from the point of view of the law what I am concerned about is that it is discretionary. I do not want to see you arguing, if you are on ground that is not solid, a right of appeal from a discretionary order. It may be political—political in a very broad sense.

Mr. McKeough: In a policy sense?

Senator Connolly: On a policy basis, yes.

The Chairman: Senator Connolly, if you will just stop there for a moment, if the minister makes a decision, there will be facts involved in that decision, even though he is exercising discretion. There may be some question of law involved in the way in which he approaches it. If you are providing an appeal, the appeal would be on facts and on law.

Senator Connolly: Or a combination of both.

The Chairman: Yes. I know what the general law is, that if there is a discretion in a decision then it is not appealable. But we are talking about Parliament; and Parliament, within the limits of its constitution, can make any law it wishes. So, in that sense, I regard it at this moment—I would want to have further consultations with our legal advisors—that the mere fact that it is a subjective judgment and in the discretion of the minister does not necessarily defeat it.

Senator Connolly: All I am raising is that it could create a problem.

The Chairman: Well, anything could. The bill itself creates problems.

Mr. McKeough: Enormous problems.

The Chairman: I do not want to monopolize the discussion. I was only putting this to you for your reaction. If, on reflection, you have anything further to contribute on that, I hope you will give us your views.

The other thing that bothers me is that at the bottom of page 10 of your brief you say:

With respect to the consideration of provincial policy objectives by the federal government, it is of serious concern to Ontario that there be clarification of the manner in which the federal government proposes to ascertain the nature and status of provincial policy objectives for the purposes of the review process.

And then the next sentence is the one that gives me concern:

In this regard, Ontario stresses that the provinces should alone be responsible for articulating their policy positions to the federal government, as an integral part of the process of federal-provincial consultation.

It appeared to me there was one thing more needed to make that as effective as your language says it should be, and that is, that not only must you stress, and alone stress the provincial policies, but that without your approval they cannot proceed to negate the provincial policies so stated.

What is the use of putting into a bill a statement that the province alone can do so?

Mr. McKeough: We are not suggesting that this should go into the bill. What we are getting at again there is that consultation business, the guidelines. As I said yesterday, and perhaps somewhat facetiously, I would like the provincial viewpoint clearly understood. I was asked this in the other committee yesterday, "Can't the local federal member of Parliament make a viewpoint?" We would say he can do so, but we would say that the provincial point of view must be expressed through the provincial government.

The Chairman: That is right.

Mr. McKeough: And not through the local federal M.P. or not through a regional desk in somebody's office.

The Chairman: Should it not be expressed in the most effective way?

Mr. McKeough: With respect, sir, I think the way you expressed it, or as I heard it, would essentially mean that the provinces had a veto.

The Chairman: Yes.

Mr. McKeough: We would not want to go that far. Even under the present federal government, we have faith in the consultative process; and we do not look for a continuation of the present situation forever. I think a veto would be wrong.

The Chairman: There are many areas in which you have vetos even now.

Senator Flynn: That case of veto would be only, I think, in a case of approval of a transaction, an investment, when you have a veto then on a negative decision.

Mr. McKeough: Then you get into the point that we have no idea what number of cases will fall under the first clause of the bill. We are told by the department that it is probably about 200 a year. As a guess, we think half of these may be in Ontario. We have no idea how many may be in Ontario and how many in other provinces. So, supposing one province says "Yes" and the others say "No", you are really into a hassle at that point. We clarified this morning, and again this does not have to be in the bill, that under the confidentiality sections the provinces have every right to consult with each other. We want the notice to say—and the minister undertook this—something like this: "In this case of yours, Ontario, I have also informed Prince Edward Island about this because they are affected. We think that you should know that our first job would be to get on the phone to Prince Edward Island and find out, and have liaison with them."

Senator Connolly: How would he do that? Would he do it under the guidelines or as a result of the provisions in this bill?

Mr. McKeough: What was the phrase they used this morning? The Minister will determine how notice is to be given; and he stated that he certainly intended to give notice.

Senator Connolly: Yes, but would he put it in the bill or would he put it in the guidelines?

Mr. McKeough: In the guidelines.

Senator Connolly: That really leads us to the next question, as to when those guidelines should appear. Are you thinking of those guidelines coming out at the time the bill is going through Parliament, before it is enacted, or after the bill has received royal assent?

Mr. McKeough: The sooner the better. I do not think there will be any single set of guidelines. We envisage that the minister is going to take a crack at defining what he means—and he indicated that this morning—perhaps next week, by "related business," for example. I do not think that definition is going to stand forever. I think some experience will be built up and there will be a more precise definition; and, we hope, after a number of years those definitions can be built into regulations and perhaps even into legislation. I used for comparison this morning what our Department of Revenue—and I think the federal department as well—put out, that is, sales tax bulletins, which carry no legal weight but which, in effect, give you some guidelines.

The Chairman: If we may move on—and it is related, that is, it is on the same page in your brief, page 10—you are concerned that the factors that are provided in this bill in its present form may permit some policy of regional disparity being practised. You say that in your view "the objective of reducing regional disparities should be pursued through programs which have been directly designed for this purpose." That is fine as a statement of policy, but if this factor, in the bill in its present form, is capable of being used in that fashion, unless you have some sanctions or something in the bill that gives you the requirement of approval of the plan, if it is going to affect your province as against another province, you have not a very effective instrument.

Mr. McKeough: No. What we wanted, and I think we have received, is an indication. Ontario has a history of sup-

porting, and will continue to support, in my view, the various federal measures which have tried to do something about regional disparities, equalization of payments being number one on the list and DREE being perhaps the obvious second item on the list. We do not think that this bill should be used in lieu of DREE. If we are trying to help a disadvantaged part of Ontario—and by the way it is not just the Maritimes or Quebec—the application of the provisions of the bill, certainly from the point of view of Ontario's opinion, when it is given to the federal government, is going to vary on a geographical basis. Our opinion as to whether a takeover in Toronto makes sense, as opposed to a takeover in Kapuskasing, is that these are going to be two different things. I am quite sure of that. I am sure that the opinion, obviously, of other governments will vary as to where in a particular province—and Ontario is probably not the best example—

The Chairman: If I may just interrupt, I was not thinking as much of takeovers as of the extension of this bill to the establishment of new business.

Mr. McKeough: Our view would be exactly the same there. If somebody wants to establish a new business in Cornwall, our attitude is much different than if he wants to establish it in Scarborough.

The Chairman: In those circumstances, if the federal viewpoint on "significant benefits" is, "No, there is no significant benefit", then if you do not want sanctions you will need an awful lot of persuasion.

Mr. McKeough: Yes, but I can't imagine a government of Canada not listening to the member from Cornwall in terms of the fact that a proposed expansion or entry of a foreign firm into Cornwall would be a good thing. I mean, governments are sensitive by definition; if they are not, they are going to be thrown out. Can you really conceive that somebody wanting to start a new business in Cornwall is going to be discouraged by the federal government because it happens to be in Ontario?

The Chairman: If we are going to be asked to make the assumption that governments will always act sensibly in all legislation, the public may not be well protected.

Senator Cook: Plus the fact that the bill is no good. If what Mr. McKeough says is so, then they will continue on as they have in the past, which may be all right.

The Chairman: I have a suggestion I wish to make to you. We have difficulty in understanding what "significant benefit" means, and you have too. In the Australian bill, which is called the Companies Foreign Takeovers Bill, 1972, instead of using the words "significant benefit" they used the words "against the national interest". Would you care to comment?

Mr. McKeough: Yes, because I commented yesterday on that. In my view, that runs against the spirit of trying to put this thing on a positive basis. Surely, the purpose behind this bill, and other actions, should be looked at on a positive basis, and "against the national interest" is essentially a negative statement. I much prefer "significant benefit to Canada", which is a positive statement. I think there is a question of philosophy here. Perhaps the words add up to the same thing, but I would certainly prefer to see it on a positive basis rather than on a negative basis.

Senator Molson: Don't you think the phrase "significant benefit" is harder to define than "against the national interest", or "detrimental to the national interest", or whatever?

Mr. McKeough: No. From the point of view of drafting a bill, both expressions are difficult. We wrestled with this wording, and our lawyers wrestled with it, and we came to the conclusion that you are not going to define it to any kind of satisfaction. It is a judgment at any point in time, and I would say both phrases are terribly difficult to define.

Senator Connolly: I suppose for the reason that you are emphasizing so much the importance of guidelines, simply because you cannot get an appropriate and accurate definition and you have to do it case by case, province by province, and area by area.

Mr. McKeough: Right.

Senator Connolly: But the thing that we ask you to remember is that you, as the government of Ontario, Mr. McKeough, have access to the federal-provincial conferences; we have not. You also have day-to-day dealings with the ministers at various levels, or their opposite numbers do; we have not. We are trying here to get the best possible wording into a bill.

Mr. McKeough: Right.

Senator Connolly: And if you say that guidelines are essential, should be promulgated immediately, perhaps simultaneously with the passage of the bill, but that they must be revised from time to time to fit the situation that you are confronted with, perhaps we cannot put that into a bill. Perhaps we have to go along with the general proposition and rely upon the provincial right—and we in the Senate are concerned with that provincial right—to live with a bill that may not be as precise as either you or we would like.

Mr. McKeough: I agree completely.

The Chairman: When the prime minister of Australia was explaining this Australian bill on second reading and was dealing with this question of "against the national interest" and how they might look at it, this is what he said:

In making judgments as to whether particular foreign take overs would be against the national interest of any of the foregoing grounds, due weight will be given to 3 other matters. One is the extent of Australian participation in ownership and management that would remain after the take over; another is the interests of shareholders of the company . . . ; the third is the attitude of its board of directors.

Now, you have moved some distance on the third point by requiring a percentage of Canadian directors on any company incorporated in Ontario. But with respect to shareholders, for instance, some years ago, when there was a different Minister of Finance whose concept was to deal with this question through inducements or penalties in the Income Tax Act—and, surely, I do not need to name the particular minister—he sort of indicated that if a 100 per cent-owned non-eligible company at that time offered 25 per cent of its shares to the public, that would come within the concept. Now, many companies did do that, but

the 25 per cent Canadian content in those companies is not recognized in any way in this bill, unless they would interpret "significant benefit" as being satisfied by their being Canadian shareholders to the extent of 25 per cent.

Mr. McKeough: We do go further and touch on it in the brief. I guess I have already mentioned this. You talk about "significant benefit". We are putting some faith in what is called the bargaining process—that great area between "yes" and "no".

I do not think there is going to be bargaining in every case, but I think that as we gain experience there can be some bargaining and there can be some significant benefit to Canada. For example, we might be getting some undertakings, formal or otherwise, in terms of company A taking over company B, neither of which is doing any research and development in Canada, in that at the time of the takeover, assuming it is going to be approved, company A would undertake to establish a research and development facility in Canada which would employ 50 people. That would be of significant benefit to Canada. There might be an undertaking that if company A takes over company B it will be possible to process a Canadian resource in Canada rather than simply shipping the resource out. That would be of significant benefit to Canada.

Those are the kinds of undertakings I mean. There would be some undertakings to purchase, wherever possible, components in Canada. Those are the sorts of things I mean, but you cannot write any of those into legislation.

Senator Flynn: What form would these undertakings take? Would they be in the form of a contract between the business and the government?

Mr. McKeough: I think in a very large undertaking, as I understand it, it probably would be.

Senator Flynn: And what would be the sanction? Do you think that once an order in council has been passed approving a takeover for instance, and if there is failure to meet the obligations assumed, the government would be able to cancel the order in council?

The Chairman: It may well be, senator, that the provisions for appeal in the bill are such that you could invoke the penalty of seizing the share interest.

Senator Flynn: I doubt, Mr. Chairman, unless there is a provision in the bill, that an order in council could be passed unconditionally.

Mr. McKeough: There would have to be some sort of a contract.

The Chairman: I think clause 23 of the bill covers this.

Mr. McKeough: It would be a contract, but I think that looking at it realistically you would mainly have to rely on good faith. It is all very well to say, "Sure, we are going to hire 50 R & D people," and then three years later they come back and you may find that they have only hired 30, or they may have hired none. Perhaps they could not hire them or perhaps the economic circumstances had changed. You are relying, as I said, on good faith, I think.

The Chairman: Clause 21 of the bill says:

Where a person who has given a written undertaking to Her Majesty in right of Canada relating to an investment that has been allowed by order of the Governor in Council fails or refuses to comply with such undertaking, a superior court may, on application on behalf of the Minister, make an order directing that person to comply with the undertaking.

Now, immediately you have a situation of contempt if he does not. Then the next clause, clause 22, spells it out.

Mr. McKeough: Well, to give you an example, the auto pact obviously is probably the best example of that kind of undertaking, and it has been in force for some time.

Senator Flynn: But it was in the form of a treaty.

Mr. McKeough: But, in fact, it was agreed to by the manufacturers.

Senator Flynn: There is no sanction in the case of the auto pact.

Mr. McKeough: Well, as I say, I think the auto pact, which is enormous, is the sort of undertaking which obviously was finalized by treaty between countries but which involved a commitment on the part of manufacturers as well, all of whom were non-Canadians. What we have recommended to the Province of Ontario, in its negotiations with Krauss-Maffei—who are going to build the prototype intermediate rapid transit system at the Canadian National Exhibition—and what we have asked for and received, after negotiations and bargaining, is the undertaking that they are going to purchase components in Canada and eventually provide the go-ahead for a share ownership. That kind of bargaining may not be possible in all cases, but it can be in some.

The Chairman: But in the auto pact, the underlying agreements binding on the companies concerned could be enforceable in the courts.

Mr. McKeough: Well, there can be monitoring too, obviously, by the federal minister. And I suppose any company involved in a takeover today and making certain commitments, perhaps not even in writing, will sooner or later be back again to take over another company, let us call it company C, or to expand. At that point somebody is going to look at the record of what they undertook to do on the first takeover to see how well they have performed, and this is going to influence the decision in the second application. Here I must admit that I know what is running through your minds—that you are leaving an awful lot to chance and goodwill, but I think that inevitably that must happen.

The Chairman: Perhaps this is not a fair question, but do you think that our approach to legislation, and perhaps particularly to this bill, should be that we should leave so much to chance?

Mr. McKeough: I think that in a great number of areas we look at there is no alternative, other than to kick the bill out entirely. I think that to try to tie down a legal definition of either "significant benefit to Canada" or "against the national interest", you have two alternatives; you either accept wording similar to that, or forget about the bill altogether. Otherwise, we will be at it two years from now trying to decide on a satisfactory wording.

What I am saying is that Ontario supports the principle of what is being done strongly enough to say that we have to throw out of the window some of the safeguards we normally would like to see in legislation.

Senator Connolly: What you are arguing for here is a course of conduct that has developed in the modern world in respect to the development of large enterprises primarily, and that course of conduct has been, by and large, accepted, and it carries its own safeguards up to a point. I can see the point the chairman is making. We are interested in the legislation, but perhaps we have to take the broad view that you take, that there are some things you really cannot put into legislation, but still, because of the mores of the time, because of the way of doing business, you accept without trying to spell out. Am I right in that?

Mr. McKeough: Yes, sir. But we can also come at it the other way. What we have had in the last three or four years are two significant examples of where we did not have legislation, imperfect as it may be, and I am speaking now of Home Oil and Dennison—and I am not carrying a torch for either one of them, but in those cases there was no legislation, and legislation was threatened and there was jawboning, but only because the government was responding to the wish to the great majority of the Canadian people or at least a significant number of the Canadian people. Now, to me, it is better to have imperfect legislation on the books than to contemplate going on with jawboning or retroactive legislation. It is not very good law, but to me it is better ethics.

Senator Cook: On that point, Mr. McKeough, let us take your imperfect legislation. For a moment, just try to look at it from the point of view of a foreign investor who is thinking of coming into Canada, either on an original basis or on a takeover. Now, as a foreigner, and not being a Canadian, he does not have the same great trust in the discretion of the minister that some of us have, so he looks at the legislation and he sees what is there. First of all, he gets approval; his project is approved, whether takeover or new. Then he sees that every time there is a chance of ownership he has to come back again. Now, when his original enterprise is approved, he enters into certain undertakings, and so he looks back and sees every time this ownership is likely to change, either through corporate reorganization which you mention on page 10, by inheritance or by finance—any way at all—the ante may be increased. The Canadian government is going to demand more and more of him, and every time there is a change in organization, more is going to be demanded, and the people taking over are going to have to give more. There is no set period, so every time this happens he is faced with this situation. What effect do you think that will have on foreign investors?

Mr. McKeough: I think it will have some; but, on the other hand, many of the same firms are investing in France, Australia, Japan, and are running into exactly the same kind of uncertainty.

The Chairman: We have not made a complete study of the Australian situation, but we do know that they do not have the words "significant benefit".

Mr. McKeough: Well, "against the national interest"—I don't like that.

The Chairman: But, at least, that puts the onus on the other side. The minister has to make a finding that it is against the national interest, if that should be the case; but "significant benefit" is such a broad, meaningless sort of expression. From your point of view would the deletion of the word "significant," leaving it simply as "benefit" be adequate?

Mr. McKeough: I am not hung up one way or the other.

Senator Walker: Mr. Chairman, you have very clearly pointed out to Mr. McKeough what could be considered by some as pitfalls of this bill and that it does not provide a right of appeal. Nonetheless, this matter is well known to Mr. McKeough; and, apparently, the Ontario government and he have considered this, have you not, Mr. McKeough? They have decided in their wisdom that this is satisfactory to them and it really is a political matter. Having pointed out the legal possibilities of it, I think that as a committee of the Senate we should not attempt to change the decision of the province, particularly in a matter such as this. They are aware of the possible pitfalls, and my suggestion is that we should leave this point and move to something else.

The Chairman: I was about to suggest that, because we have worn this rather thin. However, we ourselves must assess what our duty is. We know the viewpoint of Ontario, which has been clearly expressed. Whether we accept it is a decision for the committee and the Senate.

The other subject raised by Senator Molson some time ago relates to the approach to take-over bids and to the establishment of new or unrelated businesses. Some thought has been given to that point in the committee, and the thinking so far has been in the direction of "significant benefit" as an expression for testing a takeover bid. A different test, however, should be employed for determining an unrelated business. Have you any comment in that regard?

Mr. McKeough: I see the difference, and I would like to think about that. Let me make it clear that our purpose and our conclusions are that we support the principle at which the bill is aiming. We think it is a step, a small step, a right step but I am not here to argue one way or another. If this or any other committee or individual can find better language, we will support that language. That, perhaps, is a good suggestion, which we have not considered.

The Chairman: If you reflect on it and feel that you would like to express a view to us, would you let us know, please?

Mr. McKeough: I certainly will, sir.

Senator Molson: I would like to add that perhaps Mr. McKeough is not aware that in this committee we thought in terms of some companies that have been here perhaps 50 years and have been as good corporate citizens as anyone in Canada. Suddenly they are to be treated in the same manner as an unknown who comes in and wants to do something which would be affected by this legislation. That is really the context in which the question arose as to whether it is equitable, right and reasonable, to treat those companies as though we did not know anything about them and they had not performed in a way that gave us complete confidence in their wish to comply with the most desirable of objectives in Canada.

Senator Flynn: If my understanding is correct, the viewpoint of the Government of Ontario is that it would like to experiment with legislation respecting takeovers or foreign investment and it is not tied to the wording of the bill; that if the machinery can be improved, that is well and good. However, you are not worried, as I see it, by the uncertainty that will result from the time it will take to establish any jurisprudence or understanding of the effect of the legislation. You do not seem to consider that there is any constitutional problem involved, but take for granted that the federal Parliament has the competence to introduce this legislation. Is that the viewpoint of your government?

Mr. McKeough: Yes, we do not question the constitutionality of the principle of the legislation. We have some doubts as to the constitutionality in terms of land and property rights.

Senator Flynn: An official of the Department of Justice appeared before the committee and I asked him, in the event this bill were introduced in a legislature, if he would consider it to be beyond the competence of the said legislature, and he replied that in his opinion it would be within the competence. I cannot understand how both levels of government can be equally competent to deal with this problem. That would add to the uncertainty I mentioned. Would you not agree with that?

Mr. McKeough: I can only tell you that the opinion of our law officers is that other than in the area of land, where we may be entering provincial jurisdiction, they do not see any constitutional problems. I suppose that I should say that we reserve the right, if we do not like the way the legislation develops, to fight it on any possible grounds.

Senator Flynn: That is my next point. You have indicated that as far as the Province of Ontario is concerned it wishes to be consulted and have machinery established for that consultation. I think you accept that Ontario's perspective or policy at this time is not the same as that of other provinces, especially the Atlantic or Western provinces. There could result from this divergence of viewpoints contradictory bodies of jurisprudence. Don't you consider this to be dangerous?

Mr. McKeough: Yes, and this is where I suppose we, to some extent, contradict ourselves in terms of using this as a means of combatting regional disparities. We do not desire that, although the results may tend to do so. In other words, if there were ten per cent unemployment in Newfoundland and three per cent in Ontario, or in parts of Ontario, then the attitude would be different.

Senator Flynn: You are not worried about this, then?

Mr. McKeough: No, not really.

Senator Flynn: Because I would suggest to you that Ontario is in a much better position than are the Atlantic provinces to resist additional foreign investment.

Mr. McKeough: This is not before us, but it is obvious that the views of those concerned in Toronto at this moment in terms of growth generally, whether it happens to take place as a result of foreign investment or Canadian investment, are much different than those held in, for instance, Thunder Bay, Ontario.

Senator Flynn: Yes, certain areas would differ, but Ontario, as the most industrialized province in Canada, is much more advanced in this field than Quebec and the Atlantic or western provinces, with the possible exception of British Columbia.

Mr. McKeough: We have had very good government for the past 30-odd years.

Senator Flynn: How can you devise a national policy with such diversity of perspective from one end of Canada to the other?

Mr. McKeough: I think you adopt a national policy which in effect says nothing more than that we as a country would like to control a little more of our destiny than we do now over a period of years. I do not think anyone quarrels with that. We do not want to hurt ourselves in the process. Undoubtedly, in the administration of that national policy it will be carried out in different parts of the country in different ways, on the advice of the particular provinces.

Senator Flynn: I cannot see a policy which applies in one way in one area and in another way in another area; I do not call that a national policy.

The Chairman: There is an area in which we have used the language "a neutrality position," the sort of situation where there is a takeover bid and all that is really changed is the ownership; the nature of the business operation has not changed at all. Looking at it from the "benefit" point of view, there is a neutrality there. It would be difficult in those circumstances to support "significant benefit" in such a takeover, and yet nothing is changing and there is no damage or detriment to Canada in the process, unless the takeover person might be a person of the character of Al Capone or someone like that.

Mr. McKeough: That is an argument for dropping the word "significant"!

Senator Flynn: There would be no benefit at all.

The Chairman: Why should there be an objection to such a takeover? In other words, you are locking people in. It is the Canadian government, or a combination of the Canadian government and the province in which that industry may be located. Are they prepared to indemnify? We had a situation here the other day where a man had established a very profitable business in Ottawa, so much so that he had chased out his American competition. Now he has got to the stage in life where he wants to give thought to his estate. He has had Canadian offers and American offers. The Canadian offers are about 50 or 60 per cent of the American offers. It is quite likely that the American offers are based on the fact that they are going to come into Canada, or they are going to close up the business in Canada. How do you deal with a situation like that, where there is a penalty on a person having to follow the requirements on a takeover where he has a successful business, providing reasonable employment, yet there is a penalty; his market for sale is limited?

Mr. McKeough: I guess my answer is twofold. First, I do not know how you exclude that sort of thing from the review process. Therefore, you put your faith in the review process or a minister who says, "He has not got

another buyer and he wants to get out," and it goes through. The other point that needs to be made is that this policy, as expressed in the bill, cannot be separated from a host of other necessary policies.

The Chairman: Yes, but there could be a factor added of neutrality.

Mr. McKeough: What is wrong with respect to the example you have given is succession duties. I think succession duties have to be part of a consideration, or perhaps there will have to be reform of tax legislation. That is something that has to be looked at. If you go into the West you will find that oil producers feel there is much greater incentive to American companies looking for oil and gas than there is to Canadian companies. Rightly or wrongly, that is the situation.

The Chairman: And that affects price.

Mr. McKeough: Yes. That is something that has to be part of the development of an ongoing national policy, of which this is just a small part.

The Chairman: You would be against adding the factor based on neutralities?

Mr. McKeough: I know what you are getting at. I guess I would be inclined to put a little more faith in the process.

Senator Cook: This witness also told us that he would have to spend \$1 million now to be competitive, to stay in business. He went to his advisers—you spoke about succession duties—who told him that the best thing he could do now was to drop dead.

Senator Laing: I draw your attention to page 7, in which you say:

It is important that any review of foreign investment proposals recognize the inter-dependance between the growth of the resource-based sector and the performance and prospects of secondary manufacturing industry in Canada.

I rather suspect that behind this there is more thinking than you have put down in print. I think the reference in the preceding sentence to energy is the key.

I want to make the point that resources in Canada are not at all equally distributed. This is one of the difficulties of any government governing this country with happiness throughout the country. The result is that we have concentrations of manufacturing in one area and concentrations of energy exploitation in others. There are many Canadians in the wings of the country, where resources are abundant and are being exploited, who are a little annoyed at people in the central part of Canada telling them they are making their living the wrong way.

In the matter of energy, I want to point out that huge quantities of capital are necessary. The Government of Canada in 1967 got into this in a small way—I am talking about energy in the remote areas of the country—by the establishment of Panarctic Oil. Panarctic has been used principally as a vehicle to attract foreign capital in areas of very high cost exploration. In Alberta today, a province upon which Ontario's industry is dependent for energy sources, the Energy Board of Alberta says they have adequate supplies for 25 years. Other people say they have adequate supplies for 50 years. We are dealing with a

finite resource. In these remote areas I am of the opinion that we could not, had we waited for Canadian investment alone in the Arctic, have had any at all.

The fact of the matter is that this year there has been \$200 million expended in those remote, difficult and high-cost areas which would produce a higher cost energy too. There have been \$200 million this year, and there are \$600 million committed for the future, based solely on the unquestioned premise that there has to be an export component. In other words, we in Canada, when eventually Alberta's finite resource dries up, would not have any energy source without the fact of the foreign investment going in there, whose needs today and in the future would be even greater than ours. So if we were to pluck off one-third of 50 per cent of the energy that they produce, while the other 50 per cent is exported, it would still be of great benefit to Canada. I am a bit afraid that in the attitude towards investment we may wind up with a very great shortage of energy resources, unless we remember that there is a buyer, and it is an export buyer, capable of putting in place the resources for his portion and supplying a portion to us as well. Already, there are \$140 million committed in the Arctic by foreign firms whose only requirement to the operator was, "You go and find the energy and we have first call on 50 per cent of your find at a price to be then determined."

Their need is so great that they are in there. At the same time, I am of the opinion that their requirements are so great, the risk is so high, their need is so great, that in doing that they will eventually confer a great benefit on Canada in finding those resources, because we are dealing with finite resources.

Mr. McKeough: Two points, if I may. What you are describing, as far as the foreign-owned and controlled companies looking in the Arctic, is a great deal of uncertainty on their part as to what they are going to be able to do when they find it. If that is acceptable to them in that instance, then probably some of the uncertainties in this bill are going to be acceptable to them as well, if the prize is that great.

The other point we are trying to make in this section is to keep in front of us—as is the policy enunciated by the Province of Alberta, and as is the policy, I think, of every province in Canada, whether we are talking about energy or any other kind of resource—that it is far better to export it downstream, at any step downstream, than to export the resource. It is really rather sad that we have now had to cut off the export of gasoline, which is of significantly greater benefit to Canada than the export of crude. I think that is the point we are trying to make here.

Senator Laing: I can almost read into this that you would favour foreign investment coming into Canada to produce energy so long as it supplied Canada alone. If it came into export energy, you would oppose it.

Mr. McKeough: No, senator, I would not. I would say that if there was an exportable surplus, then I would hope that we might keep in front of us that, as the Province of Alberta is doing, and as is their policy, it is much better to export ethane than it is natural gas. I do not think we should take the position that simply because there is an exportable surplus of any resource we should automatically export it.

Senator Laing: I just want to establish the thought of the people in the wings of this country, which is that in exploiting resources they are of the opinion that they are making quite a contribution to Canada.

Mr. McKeough: I could not agree more, but I think in the wings across this country you will find the feeling that if we can find ways to do more to the raw goods before they are exported, then that is a good thing, that is a better thing.

Senator Laing: Yes, we want that too. We would like to move a number of hewers out West.

Mr. McKeough: Presumably, senator, even in British Columbia, they would prefer to sell to Japan finished lumber rather than logs that is all we are saying here. Both are of significant benefit to Canada and to British Columbia, but one is of greater benefit.

Senator Laing: Every log exported has to be treated individually and permits granted.

Mr. McKeough: That is right.

The Chairman: I should like to ask one or two more questions, Mr. McKeough. On page 19 of your brief you deal with involuntary acquisition of control. You outline the situations where that might occur through inheritance, and so forth. It might also occur through donation.

Mr. McKeough: Yes, that is a good point, Mr. Chairman.

The Chairman: On the question of the threshold by which you are either in or out of the bill, should there not be some flexibility in that respect in particular cases? Even if particular companies exceed the dollar measure, should there not be a discretion in the hands of the Governor in Council not to apply those qualifications?

Senator Walker: Order! We cannot hear.

Mr. McKeough: I am not sure I get your point, Mr. Chairman.

The Chairman: Well, there are dollar qualifications in the bill and, if you fall behind those, you are not subject to it.

Mr. McKeough: That is right.

The Chairman: If you are above those dollar qualifications, you are subject. Conceivably, there could be situations where, even though a company exceeds those dollar qualifications, there should be a flexibility under which the minister could say, "You do not have to follow all these procedures." Otherwise, you are faced with the situation where it may be 90 days or 120 days until a decision is handed down.

Mr. McKeough: I think the time period should be shortened.

The Chairman: My own feeling is that I do not think it should be more than 60 days. I am not even sure whether it should be that long.

Mr. McKeough: We suggested this morning, Mr. Chairman, 45 days.

The Chairman: Personally, I would try 45 days—I would try 30 days.

Mr. McKeough: I do not know whether the Province of Ontario is going to have a full-time person on this or not. However, if the person involved thinks he has 90 days to worry about it, he is not going to do anything about it until the 89th day. If he has 30 days, he may get at it on the 29th day. We think it can be shortened, recognizing that there may have to be extensions, although we think there should be a time limit on the ultimate number of extensions. At some point the federal government has to say either "yes" or "no."

The Chairman: The only way you can really deal with it is to put a time limit on it.

Mr. McKeough: Yes.

Senator Connolly: The Investment Dealers Association brief refers to the use of a summary procedure rather than the normal general procedures that are discussed in the bill. Perhaps a provision in the bill for a summary procedure in respect of special types of cases might be an appropriate thing to be considered. Perhaps some decisions have to be made much more quickly, while others do require a good deal more study. Perhaps two types of procedures would be desirable.

Would you care to comment on that, Mr. McKeough?

Mr. McKeough: I quite agree, senator. It may be easier to do that by regulation than in the bill itself, but if it is done in the bill, that is fine.

Senator Connolly: The bill, perhaps, may have to make a distinction between a regular procedure and a summary procedure.

Mr. Chairman, could I come back to the question you raised a moment ago in connection with involuntary acquisition of control? This is dealt with on page 19 of the brief, and it states:

The bill should clearly indicate whether or not the review process is applicable in these circumstances. In our view, such acquisitions should logically be subject to review but special consideration should be given to the possibility of undue hardship to the beneficiary or next of kin.

Or, in your example, Mr. Chairman, the donee.

Mr. McKeough, in view of what you have already told us about the guidelines, do you think that that could be better covered by guidelines than by some general provision in the bill where that is really more of pious hope than anything else?

That may be another question. I do not know whether it can be done in the bill and achieve the result that you suggest in the last sentence.

Mr. McKeough: We do not know either, but your suggestion for some reference, perhaps, in the bill to a summary procedure—

Senator Connolly: Perhaps that could be included in the subject matter of a summary procedure.

The Chairman: Do you mean, Senator Connolly, providing in the bill that by regulation the minister shall consider it?

Senator Connolly: That kind of thing, perhaps.

The Chairman: I have one further question, Mr. McKeough. I am thinking of the situation where you have two United States companies, both having subsidiary companies in Canada, and one of the companies, in the United States, decides that it is going to sell out to the other, including the subsidiary in Canada. In those circumstances, as the bill now stands, this would be the subject matter to be dealt with by the board of review and the minister. There is some element of intrusion into extra-territorial jurisdictions. One can make a legal argument regarding this, but I should not put that side of it to you. However, if American, European, or United Kingdom companies, in their dealings outside of Canada, bring about a transfer of the shares of the subsidiary company in Canada, do you not think that that should be exempted?

Mr. McKeough: No, Mr. Chairman. I think that, really, is what we are trying to get at. We are trying to get at the situation where two chummy people sit down in New York City and decide to merge, and one says to the other, "I want to buy you out. By the way, we have both got plants in Canada. That is okay too." There has to be an intrusion there; there must be. I think really that is what we are talking about, the responsibility of good corporate behaviour. Good corporate behaviour and good Canadian citizenship would indicate that there should be discussions in Canada about the merits or demerits of a Canadian merger or acquisition.

You could run right into, for example, the existing, let alone the new, competition bill policy. Surely it is not in Canada's interest simply to say we should exempt that kind of merger? There are some examples around of where that sort of thing has gone on. I think of one in my own community where that took place. It concerns a rather large company in Canada. The general manager was to be promoted to a position in the United States, and in the course of accepting this large promotion—which ultimately he did not do—he said, "Who is going to be the general manager in Canada?" He was told, "There isn't going to be one. We have five plants, and the plant managers will each run their own show." In my view, that is not the kind of corporate citizenship we are trying to encourage.

The Chairman: It would not be a merger of the two Canadian companies, because they would still exist. The ownership, instead of being in two non-eligible persons' hands, would be in one.

Mr. McKeough: I think this is something we have a responsibility to take a look at. Can I ask a question?

The Chairman: This is unusual, but yes.

Mr. McKeough: This committee, and the Senate in particular, has a record of taking a particular interest in these matters. I am now getting into corporate law, securities trading and so on. Are you happy with the percentage figures in the bill of what constitutes ownership and what constitutes control?

The Chairman: No.

Mr. McKeough: We think they are a little low.

The Chairman: We do too. No: the chairman does. The committee has not expressed a view, as such, yet.

Senator Connolly: Do you have any figures in mind?

Mr. McKeough: The securities legislation describes an insider as 10 per cent. This goes down to 5 per cent.

Senator Beaubien: We discussed that point the other day.

The Chairman: That is right. It is noted in our material for our memorandum.

Senator Connolly: I think it is important to get Mr. McKeough's view on this.

Mr. McKeough: We would certainly like to see it raised, and we are looking to this committee, among others, for advice.

Senator Connolly: You think 5 per cent is a little unrealistic when you are talking about control?

Mr. McKeough: It has not been used in any other legislation, and I think there is some merit in trying to keep uniformity in legislation. We obviously cannot have all provincial and federal legislation uniform, but there is not that much difference. If we decide that 10 per cent makes sense in the banks and the securities industry, surely that might be a definition here as well?

Senator Connolly: I should like to ask one question on page 20, about "Financing by Lease or Sale-Leaseback". Would you give us your views about what you say there?

Mr. McKeough: Perhaps I could ask somebody else to deal with this, because I am a little confused on this myself.

Mr. C. R. B. Salter, Q.C., Executive Director, Companies Division, Ontario Ministry of Consumer and Commercial Relations: We acknowledge this could be a difficult area in which to develop criteria, but this relates to where the clear and evident purpose of the transaction, a sale or leaseback transaction, tested against commercial practice, is a financing device, where it is clear that it is not a non-eligible person who is exercising control over the equipment.

Take the case of an aeroplane. If an eligible person directs where the aeroplane goes, the fact the ultimate ownership is in a non-eligible person is perhaps not relevant. Mr. McKeough made this point before the other committee yesterday. If at the end of the arrangement, in 20 years or so, the asset has no significant useful life left in it, then we believe it should be quite possible to exempt the sale or leaseback arrangement.

The Chairman: If the chairman might express a view, if Senator Connolly would permit it, I think the suggestion is an excellent one. There is a benefit to Canada in this.

Mr. McKeough: If it is debt financing, as opposed to equity financing. That is the distinction we are trying to draw. If it is debt financing, we are not concerned about where it comes from.

Senator Cook: In this clause the factors which have to be taken into account are (a), (b), (c), (d) and (e). The minister and his officials sit down to discuss these factors. In a case particularly of the acquisition or control of a Canadian business, do you not think we might not add (f), that the interests of the existing Canadian owners should be taken into consideration?

Mr. McKeough: Yes, that is right.

Senator Cook: It seems to me to have been entirely neglected.

Mr. McKeough: That is the point the chairman makes about no other buyer. Yes, I think that is reasonable.

The Chairman: Have you come to a firm conclusion that the bill in its present form is constitutional?

Mr. McKeough: We have some reservations about land, but by and large we think it is constitutional.

The Chairman: As you know, the Justice Department gave an opinion that the bill was constitutional. When we asked for support I asked the witness, "Will you put your finger on one head in section 91 and tell me where the support is for the validity of this bill?" He mentioned a number of heads, such as aliens, and peace, order and good government. Finally he said, "There really isn't any one head on which I would feel we could lean to support the validity of this bill. Therefore, what we think should be done is that you look at the bill with section 91 as a whole. Gathering together all that jurisdiction and looking at it in that form, you must conclude that only a national government could do that, the combination of everything."

I am sorry I did not put the next question to him, but there was a change of subject matter. It strikes me that it is something like studying a futuristic painting. I am not recognized as an authority on futuristic paintings.

Senator Connolly: I would not say that.

The Chairman: When my friend, who is an authority, tells me what is in a painting, I then say, "Here is my finger. Will you put my finger on the place where that thing is that you are talking about?" To me section 91 seems to be that kind of a job. There does not seem to be any place where you can put your finger. It is not peace or war; if the provinces and the federal authority get into differences as to which one is right and which is wrong and there is a confrontation, it is not order, it may be disorder, and there may not be good government.

Mr. McKeough: When we get dissatisfied with the administration of the bill and decide it should be changed, and perhaps attacked on constitutional grounds, we will know where to look for counsel.

The Chairman: No, I just would not be counsel. Are there any other questions? Mr. McKeough, we have enjoyed your appearance here today. We feel it has been exciting and stimulating. We have learned the answers we were looking for to a lot of questions. We did not tell you the things we were looking for, we wanted to get your answers without suggestion or persuasion, and I do not think we have been left with a dilemma. We also wish to thank all the members of your delegation.

Mr. McKeough: Thank you very much.

The committee adjourned.



FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

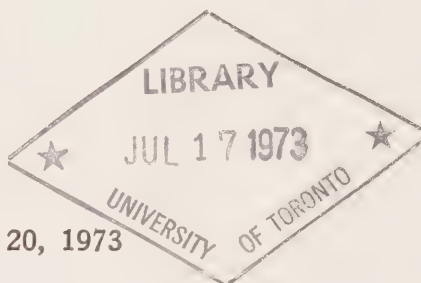
STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 12

WEDNESDAY, JUNE 20, 1973



**First Proceedings on the Examination and Consideration on Bills based on
the Budget Resolutions Relating to Income Tax in Advance of the said Bills
coming before the Senate**

(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, June 14th, 1973:

The Honourable Senator Connolly, P.C., for the Honourable Senator Hayden moved, seconded by the Honourable Senator Laing, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider any bill based on the Budget Resolutions relating to income tax in advance of the said bill coming before the Senate, or any matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

ALCIDE PAQUETTE,
Clerk Assistant.

Minutes of Proceedings

Wednesday, June 20, 1973 (2.30 p.m.)

(12)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 2.30 p.m. to examine and consider bills based on the Budget Resolutions relating to income tax in advance of the said bills coming before the Senate. (Bills C-192 and C-193).

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Connolly (*Ottawa West*), Cook, Desruisseaux, Flynn, Gélinas, Laing, Molson, Smith and Walker. (12).

Present, but not of the Committee: The Honourable Senators McNamara, Lafond and Heath. (3)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Messrs. Charles B. Mitchell, C.A. and T. S. Gillespie, Consultants.

The following witnesses were heard:

Department of Finance:

Mr. M. A. Cohen,
Assistant Deputy Minister;

Mr. F. R. Irwin,
Director, Personnel
Commodity and Estate Tax Division.

Department of National Revenue:

Mr. H. E. Garland,
Director General,
Tax Policy.

At 4.30 p.m. the Committee adjourned until 9.30 a.m.,
Thursday, June 21, 1973.

Attest:

Georges A. Coderre,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, June 20, 1973

The Standing Senate Committee on Banking, Trade and Commerce met this day at 2.30 p.m. to examine and consider any bill based on the budget resolutions relating to income tax in advance of the said bill coming before the Senate, or any matter relating thereto.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, before we get on to the income tax bills I should like to refer Senator Connolly to the question he was concerned about this morning about a discretionary decision.

Senator Connolly: Yes.

The Chairman: If he would have a look at sections 172, 173 and 247 of the Income Tax Act, which was only enacted in 1972, he would see that those discretionary decisions of the minister are subject to appeal. One of the places they can go is to the Federal Court.

Senator Flynn: It is a decision of the minister. It is not an Order in Council; it is a decision of the minister.

The Chairman: That is correct, but that is what we were talking about this morning.

Senator Flynn: The act mentions an Order in Council following the recommendation of the minister.

The Chairman: The point is that if the minister makes a decision at that stage—

Senator Flynn: A decision to recommend, not a decision.

The Chairman: That is fine. That is why we are not appealing his recommendation, but in order to recommend he must make a decision.

Senator Flynn: I know, but how can you presume that the Cabinet as a whole will accept his recommendation?

The Chairman: We do not have to. If he makes a decision...

Senator Flynn: You certainly do not have to, but I mean you cannot appeal the recommendation of the minister.

The Chairman: No, I am not talking about that. I am talking about appealing the decision of the minister when he says "No."

Senator Flynn: He does not say "No". He recommends to the Cabinet to say "No" or to say "Yes," and the Cabinet says "Yes" or "No".

The Chairman: But the point is that at the stage before he makes his recommendation, what I am saying is, first, that the grounds for any recommendation that he is going to make we should know. Those are his reasons.

Senator Flynn: I know, but it seems...

The Chairman: Senator Flynn, we are going to find some way of doing that.

Senator Flynn: I want to find some way of doing it, but I am afraid that the way the provision is drafted now the decision is really made by the Cabinet and not by the minister.

The Chairman: I would make this comment, Senator Flynn: Anything we might do in the way of outlining a procedure could not produce anything that was worse than what we have in this bill.

Senator Flynn: Agreed, but I wanted to point out that in these provisions of the Income Tax Act a decision of the minister is final and therefore the appeal to the court is something normal; whereas in the present bill the decision of the minister is merely a recommendation to the Cabinet for an Order in Council. It is not a final decision. It is hard to appeal from a decision to recommend, when we do not know what is going to be the final decision of the Cabinet.

The Chairman: I think within an area where Parliament has jurisdiction it can make any law it wishes.

Senator Flynn: Agreed, but we want to make a good law.

The Chairman: That is right. I just thought I would point out to Senator Connolly—who was disturbed because this might be an exercise of discretion—that we have dealt with that before.

Senator Flynn: Oh, yes. As you mentioned this morning, you tried to deal with it in the "class or kind" bill.

The Chairman: But they quit on us. At any rate, we have to deal now with Bills C-192 and C-193. Bill C-192 is the shorter of the two. Would you like to start with it?

Hon. Senators: Agreed.

The Chairman: We have with us this afternoon Mr. M. A. Cohen, Assistant Deputy Minister, Department of

Finance, who has appeared before this committee before. We have been very pleased with the way in which he has dealt with explanations in the past. If he does as good a job today, we will be that much happier. Would you start with Bill C-192, please Mr. Cohen?

Mr. M. A. Cohen, Assistant Deputy Minister, Department of Finance: Mr. Chairman, perhaps an introductory remark on the bill would be helpful. The bill contains really only one significant clause, namely the provision for a reduction in the rate of corporate tax to the extent that a corporation has earned what we call manufacturing and processing profits. The actual reduction would bring the corporate rate of tax down from 49 per cent this year to 40 per cent.

Senator Flynn: That would apply to last year as well?

Mr. Cohen: No, last year it would have brought it down from 50 per cent to 40 per cent, had it been in effect, but the bill is only prescribed to take effect as of January 1, 1973. It is only effective this year.

Senator Flynn: I thought it was to be in effect for 1972 as well.

Mr. Cohen: It was announced in May of 1972. It was contemplated to be effective commencing January 1, 1973, for profits after that date. However, there was another aspect which was announced in the May budget of 1972 which took effect immediately. I am referring to the fast write-off which is a different issue not dealt with in this particular bill. Perhaps that is what you were thinking of.

Senator Flynn: You are right.

Mr. Cohen: As I was saying, honourable senators, the basic corporate rate of tax is scheduled to be reduced by 1 percentage point in each of the next several years until it reaches 46 per cent.

Senator Connolly: In 1976.

Mr. Cohen: That is correct, Senator Connolly. The effect of this provision will be to bring that rate down from wherever it would normally be in 1976 and afterwards, 46 per cent, down to 40 per cent to the extent that the corporation has earned manufacturing and processing profits.

The Chairman: Let me test that right there. For the year 1973, assuming this bill has become law, what will be the corporate rate of tax applicable?

Mr. Cohen: To the extent that the corporation has manufacturing and processing profits, it will be 40 per cent.

The Chairman: In 1974?

Mr. Cohen: Forty per cent.

Senator Connolly: And forever after it will be 40 per cent.

Senator Flynn: Oh, no, not forever after.

Senator Connolly: Providing subclause (3) does not apply and subclause (2)—

Senator Flynn: Oh, yes: providing, providing, providing.

The Chairman: I interrupted you, Mr. Cohen. Go ahead.

Mr. Cohen: There is another aspect I think one should look at in the context of a general overview. To the extent that the corporation is also entitled to enjoy the benefit of what we call the small business deduction, that is, to the extent that some part of its profits after this provision will be taxed at 25 per cent—that is the effect of the small business deduction—in respect of those profits that would qualify for the 25 per cent rate, to the extent that those profits are also manufacturing and processing profits, the rate applicable will be 20 per cent instead of 25 per cent.

So the two main features of this bill are, one, to bring the high rate from wherever it normally is down to 40 per cent and, two, to bring the low rate down from 25 per cent to 20 per cent in so far as there are manufacturing and processing profits.

That is really, in a nutshell, senators, what the bill is about. There are two clauses in the bill. The first clause details all of that. The second clause in the bill is a consequential, technical amendment which I do not think you would really want to concern yourselves with. It has no policy implications. It is just a reference number clause.

The Chairman: There are exclusions in the bill, however. What are those exclusions?

Mr. Cohen: Well, the exclusions to which I think you are referring, senator, are those which go to the question of what a manufacturing or processing profit is or is not.

The Chairman: Where do I find that?

Mr. Cohen: Subclause (3) on page 3 of the bill. Well, the list of exclusions is basically found on page 4 of the bill, where you will find the phrase “‘manufacturing or processing’ does not include...” and there you will find a list of items legislatively prescribed not to be manufacturing or processing profits.

Perhaps a word of background might be helpful. The minister took the decision not to attempt to define “manufacturing and processing profits”. He has spoken about this on numerous occasions both in the other place and publicly. His view was that if an attempt was made to define “manufacturing and processing profits”, first of all it would be extremely difficult and, secondly, it would likely be inaccurate, incomplete and very quickly obsolescent, because things change very rapidly in our technological society and it was his desire to have as generous an approach to this problem as possible, to include as much as possible within reasonable limits. Hence he took the decision to let the words, “manufacturing and processing profits” to be defined by the courts, giving taxpayers the most flexible and generous—well, perhaps not generous, but certainly flexible definition.

Senator Flynn: The word "generous" is rather amusing when you look at the exclusions.

Senator Laing: What is comprised in fishing? Catching the fish? What about when you put it in a can?

Mr. Cohen: Canning would be processing. Here again, the Department of National Revenue have to interpret this, and there are people here from the department who may be able to answer. The whole process of canning, I believe, would be processing and would be included. If I could just continue for a moment, against the background of not defining "manufacturing and processing", the minister decided to exclude certain items which might otherwise well be considered either manufacturing or processing. The more difficult word here is "processing". I think there is probably more agreement among people as to what "manufacturing" means, but I think that "processing" is more difficult. The exclusions here form an attempt to eliminate what one might call primary industry. The major thrust of the measure, I think, was to assist secondary industry and this list of exclusions is designed to eliminate principally primary industry and to some extent industry such as transportation, communications, construction which are not exposed, as I think the minister has put it, to foreign competition, fluctuations in the dollar and other international considerations. His main concern was to assist secondary industry in the face of the international market in which they have to operate and compete. Hence the list of exclusions.

The Chairman: Then, on the question of processing, there is a great market in the United States for Maritime fish, especially cod and a few other types, which are frozen in blocks and then shipped. Would that be regarded too for the purposes of this legislation as being processing? Mind you, it is not the whole fish that is frozen; they are cut into blocks and then those blocks are frozen and shipped to the United States market.

Mr. Cohen: I don't think I can answer that question for you.

The Chairman: Well, who is here from the Department of National Revenue?

Mr. Cohen: Mr. Garland is here.

The Chairman: Everybody knows what a frozen cod block is.

Mr. H. E. Garland, Director General, Tax Policy Branch, Department of National Revenue: I would think, Mr. Chairman, that processing, cleaning, filleting and freezing would come within the meaning of the term "processing". It is doing something whereby the product is different after from what it was before. In other words, something has been done to it or something has been added to it, whether it is cleaned or scaled, and so it is a different product.

The Chairman: I thought that was what the answer would be because the plant is called a processing plant. But that would not of necessity make the product the

result of "processing" in the legal interpretation. But if you take the head, the scales, the tail and the bones from the fish, and then cut them into blocks and freeze them and ship them, that would qualify as processing, I would think. There is a great deal of that done in the Maritimes, in Newfoundland and Nova Scotia particularly.

Senator Flynn: And the Magdalen Islands.

Senator Blois: There is also a great deal of work done in the fruit industry, if you take strawberries or blueberries, for example. In my province of Nova Scotia, blueberries are a very big item, and some are frozen and some are canned. I would regard this as processing, and I am wondering where that would fit in this context. Some are coned, some are frozen and some are dried because there are so many different ways of doing this. I think that the average man reading this bill is going to be more confused than some of us are.

The Chairman: Well, looking at it in the ordinary way, if you just froze the blueberries, the product is the same.

Senator Flynn: I think the freezing of the fruit would be processing. After you have picked the fruit, which is excluded, I think the mere operation of freezing the blueberries would come under "processing," but that would be the only part of the operation that would do so.

The Chairman: But involved in that there may be some sorting and sizing. Would you care to make any observations on that Mr. Garland?

Mr. Garland: I am afraid we are going to have some problems when it comes to that grey area.

Senator Connolly: Generally the test seems to be, from the discussion up to now, that if you take a natural product and condition it for a specific market by changing it in some way, then that is probably a processing or manufacturing operation. Is that a fair statement?

Senator Cook: Changing a live fish to a dead one.

Senator Molson: On the end of a string.

Senator Cook: Well I come from Newfoundland and it qualifies.

The Chairman: Changing it from a live to a dead fish—I don't think that would qualify.

Senator Laing: All saw milling would qualify?

Mr. Garland: Yes.

Senator Flynn: Logging would be only cutting the trees.

Mr. Garland: Logging itself I do not think would come under the term.

Senator Flynn: That would refer to the steps after the trees had been cut.

Mr. Cohen: The operation of the sawmill itself would certainly be processing.

Senator Molson: Isn't the thrust of this towards those businesses that are in fact in competition with others of possibly an international nature. Isn't that the whole thrust of it—to have more manufacturing and processing in Canada and giving them that advantage? Logging and fishing do not qualify for that, and neither does construction because construction is not competing with any non-Canadian company.

Senator Flynn: That is what the minister said.

Senator Blois: Another item that comes to my mind, Mr. Chairman, is pulpwood because that is important in my province. Some of that is peeled before going to a mill. Would that be counted as processing?

The Chairman: Well, it is changing the condition of the product; but, of course, I am not making the decision.

Senator Flynn: If Senator Molson is correct, where is the competition in the newsprint, for instance?

Senator Molson: There is lots of that.

Senator Flynn: Not in the last few months. You might speak of last year, but not in the last few months.

Senator Molson: But newsprint is not excluded.

Senator Flynn: But the processing of the wood after logging is. You mentioned that all this manufacturing and processing was given an exemption or additional relief from tax because of the international competition.

Senator Molson: All these southern pine mills in the United States are in competition, and so are Swedish mills and Finnish mills.

Senator Connolly: But that is not the only test, surely?

The Chairman: Mr. Cohen, were you suggesting that a test would be that the product was in competition with other products of a similar kind?

Mr. Cohen: Not at all. Perhaps I misled you. When I made those comments before, I was talking about what the minister had in mind as a policy objective. But there is nothing in the legislation which talks at all about whether the product is competing or not in an international market. It will determine simply whether or not it is manufacturing or processing.

Senator Flynn: What the minister had in mind is only what he said in the house. He may have had other things in mind.

Senator Connolly: You have got to get it out of the legislation.

Senator Flynn: No, you do not get it out of the legislation.

Senator Connolly: You have to get it out of the legislation.

Senator Flynn: No.

Senator Connolly: You cannot get it from something behind the legislation that was said in the house.

Senator Flynn: It is a technical operation to enforce the act. The intention of the minister may have been something else.

Senator Laing: This is an inducement to processing, and processing employs more people.

Senator Flynn: That is why I wanted this affirmation. The idea is to create more jobs. Is that it?

Mr. Cohen: That is correct, sir. That is certainly a major purpose.

Senator Flynn: We can start from there.

Senator Connolly: Have we had these words used in other tax measures, upon which Mr. Garland or his colleague have given rulings? Are these new words to the legislation?

Mr. Cohen: Perhaps I can answer that in part; and perhaps Mr. Garland would want to add something. These words have been used before, although not in a way, I think, which provides the perfect answer as to what they mean or will be interpreted to mean by the Department of National Revenue or the courts. They have been used in income tax legislation. More importantly, they are not too different from the concepts used in the application of the federal sales tax which is applied at the manufacturing level. There is a great deal of experience, which perhaps Mr. Garland can elaborate on, although he does not come from the customs and excise side of the Department of National Revenue; there is a vast body of administrative experience in applying the notion of manufacturing and processing to the federal excise tax. There is something to draw on. That is not a perfect fit, but it should perhaps be very helpful.

Senator Laing: What about a corporation that does both the original primary job and the processing job as well?

Mr. Cohen: To the extent that it has manufacturing and processing profits it will qualify. I suppose the question that begets is how you determine the extent of its manufacturing and processing profits.

Senator Laing: If I owned such a company, I would see that logging was non-profitable.

Senator Flynn: Or fishing.

Mr. Cohen: Perhaps I could draw your attention to page 3 of the bill. At the bottom left-hand corner you will find subparagraph (a). If I may paraphrase it, it says any manufacturing and processing profits means such portion of its income as is determined by regulations to be its manufacturing and processing profits. What that regulation will contemplate is a formula approach to the problem. I think last December the minister issued a news release outlining in narrative terms—

Senator Laing: Sort of bench marks.

Mr. Cohen: No. It is almost a mathematical problem. Forgive me for oversimplifying it for a moment; it is derived principally from the relationship of the labour and capital used in the manufacturing activity as a percentage of the total labour and capital used by the corporation.

Senator Flynn: To meet your way of avoiding the tax, Senator Laing.

Senator Laing: Oil refineries will come within this?

Mr. Cohen: I do not know whether the refinery will come in here, or come through the depletion. I am told the refinery will be in this side. The reason I hesitated was that we had to draw a line in the natural resource sector. If you are on the primary side of that line you qualify for depletion, the natural resource type of fast write-off. If you are on the other side of that line you qualify for this. We have tried to design it so that there is no gap between these two, but also so that there is no overlap.

Senator Flynn: You say refining oil would qualify. It is interesting to notice that processing gas, if such gas is processed as part of the business of selling or distributing gas in the course of operating a public utility, is excluded?

Mr. Cohen: That is correct.

Senator Flynn: That is rather a fine distinction.

Senator Laing: That refers to wet gas and the separation of sulphur.

Mr. Cohen: That is essentially aimed at the utilities, which the minister felt was really a basic primary industry.

Senator Laing: But the utilities buy dry gas; they do not buy wet gas. You are talking about the process of separation of sulphur from wet gas.

Senator Connolly: That is a manufacturing process.

Mr. Cohen: That is a process.

Senator Laing: Is it?

Mr. Cohen: You have more technical knowledge on this than I have.

Senator Laing: Are sulphur producers going to get this benefit?

Mr. Cohen: That, I think, will be a process.

Senator Laing: Good for them.

Mr. Cohen: They will get one or the other, either the basket of natural resources benefits or these.

Senator Connolly: What about the manufacture of propane, for example?

Mr. Cohen: That would be manufacturing and processing.

The Chairman: I would think the same thing would apply where you dehydrate a product for shipping so that you do not have a heavier load, so that you are not carrying a lot of water and paying for it during transportation. I would expect the dehydration process would be a processing operation entitled to this benefit.

Mr. Cohen: I would think so.

Senator Flynn: There will be a lot of people who will not be able to benefit from that tax.

The Chairman: For instance?

Senator Flynn: Corporations, all those who are excluded.

Mr. Cohen: That is correct, senator.

Senator Flynn: The test will again be the one mentioned by Senator Laing, that they are not in a class where this decrease in tax will have the effect of creating jobs, supposedly.

Mr. Cohen: The bill contemplates that you will have the benefit of this if you are in a manufacturing and processing sector.

Senator Flynn: I know.

Mr. Cohen: That is all the law says.

Senator Flynn: I know, but the frontier is rather grey and not very definite. You are in or you are out. If you are out, you may have a complaint, and it would be on the basis that you are not incited to create jobs by the reduction in tax.

Mr. Cohen: I am not sure I follow you, senator.

Senator Connolly: That is a question of policy.

Senator Flynn: It may be a question of policy. I am not asking the witness to state a policy. I am just trying to find out why one person is excluded and another is included.

Mr. Cohen: The answer to that is not really a matter of policy.

Senator Flynn: As far as the law is concerned, no, it is not.

Mr. Cohen: It is a matter whether or not you are a manufacturer or processor.

Senator Connolly: A matter of fact.

Mr. Cohen: That is a matter of fact in law; that is correct.

The Chairman: Senator Flynn was arguing that there may be other areas which, if they got a similar benefit, would be able to make the same kind of contribution in the way of increased employment.

Senator Flynn: Yes.

The Chairman: When you get to that, that would be a policy decision, I would think.

Mr. Cohen: That is correct, that is a policy decision.

The Chairman: You would have to ask the minister that.

Senator Flynn: But it will not always be easy to include or exclude.

The Chairman: That is right, I agree.

Mr. Cohen: If I may say so, the decision whether or not you are in or out will not depend in any way, shape or form on whether or not you are creating more jobs.

Senator Flynn: I know that. I know that was the reason of the minister.

Senator Smith: Has the department had any particular representations made or inquiries directed to them from the fishing industry in general? I think it is a little more complicated and important than may have been indicated by some of the jokes we have been making about it. Have you had any particular representations to you, that you can recall, as to the application of this to the industry in general?

Mr. Cohen: No, not in the Department of Finance. There may have been representations, but not in the case of the fishing industry.

Senator Smith: The fishing industry took it for granted that it is one of the industries to be included, and benefits from this. I should like to put a few specific questions and, if you cannot answer them today, perhaps we could get them on our record so that the industry would know where they stand. I do not work in the industry, but I have been with it all my life and I know something about it.

The fish processing plants do something to the fish. In some parts of the industry nothing is done. I refer to the round fish, the frozen cod, the chilled cod. There is a market for round fish in various parts of the world. Frozen herring can be shipped to Maine for further processing. With frozen mackerel it is the same thing. Then we come to the exports between provinces and you go through the same degree of processing as, for example, in the case of chilled salmon which is round fish, where the whole salmon are available for export, and particularly whole salmon from the West Coast.

Then there is the frozen or chilled halibut, chilled or put in the freezer and then put in ice and sent especially to the Boston or the Chicago market and all the way from the west coast to the east coast. Some processing plants may specialize in halibut and a great deal of business is done in the frozen or chilled round fish.

I want to add to what has already been said about fish blocks. I have no doubt that they qualify as a processed product as part of the plant operation, having been filleted, then packed in a big block. The blocks are ready for manufacture into shapes that are known as

fish sticks. These are the items which, I should like to know, will qualify as being "processed"?

The Chairman: You are concerned about the freezing of the whole salmon, as frozen and shipped, as well as that frozen operation which qualifies as processing.

Mr. Cohen: I certainly cannot answer these specific questions for you here, nor even could I answer them if I had time, because they are particularly technical questions. I know that the Department of National Revenue has given advance rulings on questions like that. People have been advised to put specific sets of facts before the department and they will give a ruling, even though the bill has not become law; they will give an advance ruling.

Senator Connolly: Do they charge \$150?

The Chairman: Maybe we could get advance ruling today?

Senator Flynn: You will get your money's worth!

Mr. Garland: If you want a ruling that is binding, that will cost \$150 and costs, but in this area we are giving both a verbal and written opinion.

Senator Connolly: And the verbal ones are free?

Mr. Garland: And the written ones are free also—just an opinion.

Senator Molson: Not binding.

Mr. Garland: Which will be subject—

Senator Smith: I know some of these inquiries might seem small, but they are important to many members of the fishing industry, and I am surprised that the Fisheries Council, which is located here in Ottawa, has not made some reference to them.

Mr. Cohen: Mr. Chairman, could I correct an answer I gave earlier, while there is time? I specified one fishing association or company which did approach the Department of Finance for information. I do not know which one it was. I think it was the fisheries council, but I am not sure.

Senator Smith: The Fishing Packers Association, either provincial or regional.

Senator Molson: Our two present witnesses, Mr. Cohen and Mr. Garland, are wisely not getting involved in statements of policy, but I think they are leaving us in quite a hazy fog in some respects. I would like to ask either or both of them if the purpose of this bill does not appear to be that, for example, if there is a manufacturer of widgets in Canada, that as a manufacturer he would qualify, so that the manufacturer of widgets across the border in the United States who is benefiting under DISC has not got an advantage, either in export markets or in our own Canadian market, on the assumption of no tariff. That is one thing.

The second thing is, if there is a service industry, say dry cleaning, on this side of the border and one across the border, this dry cleaning industry in Canada does not qualify because it is a service industry and not a manufacturing or processing. On the other hand, the one across the border is not going to come in and take away the jobs of the people engaged in the service industry in Canada. May I ask if that is their general understanding of where we are trying to go?

Mr. Cohen: I am not sure if I derive a question. I am not sure I can follow the precise question. It is a policy matter which really the Minister of Finance should speak to. Perhaps the thing I should do is refer you to the speech he made on second reading in the other place.

Senator Flynn: It is such a long time ago.

Mr. Cohen: June 13.

Senator Flynn: You mean, the present minister. It was the second speech on the same subject.

Mr. Cohen: He outlined once again the objectives in this. I think that in general his objection was twofold—one, to create jobs, the other is to do it in areas in which it is likely to be an effective influence on international factors whether they be export or marketing?

Senator Molson: That is just what I asked.

Mr. Cohen: That is his general objective.

Senator Molson: Thank you.

Mr. Cohen: In order to get there, he has adopted this particular approach. He has talked about secondary manufacturing processes, although the word "secondary" does not appear in the legislation. You get to it by virtue of the exclusions and the formulae. We are really pointing at secondary manufacturing when we speak of processing, though that is not a perfect fit. There are some aspects of processing and manufacturing which are not reckoned by some manufacturers, but there are some other industries or businesses which are.

Senator Molson: Broadly the service industries are not in competition with DISC companies in the United States, and all the manufacturing industry in Canada is in competition either within our own markets or in external markets, broadly speaking?

Mr. Cohen: Broadly speaking, yes.

Senator Molson: That is what I am trying to get at.

Senator Flynn: The net result is that one is in a better position than the other, because there is competition. As far as the Department of National Revenue is concerned, I pay less because there is competition.

Senator Molson: You pay less what—tax?

Senator Flynn: Yes, that is right, I pay less because there is competition.

The Chairman: The way you get around that is, just qualify for the exemption.

Senator Flynn: It is all very well, but when you try to select a group, because of some reasons you give them an advantage over the other. If I pay less because I manufacture and it serves my purpose, my neighbour who is in a service industry will pay more. Is that fair?

The Chairman: That is the fortune of war.

Senator Flynn: I know the kind of war you are talking about.

Senator Connolly: Isn't the answer to that question that it is a matter of policy? The policy goes so far.

Senator Flynn: I know.

Senator Connolly: If Senator Flynn was Minister of Finance, he would not want to extend it to service industries.

Senator Flynn: That is right, I would try to be fair—but there is no risk of my becoming Minister of Finance!

Senator Connolly: Oh, I don't know.

The Chairman: Can we move along? My understanding is that there is to be comment or discussions on page 6, dealing with the 60-day period. I don't know whether it is a 60-day period, but in any event there is a period within which a certain number of members may stand up and raise an issue and force the government to consider the continued validity of this legislation.

Mr. Cohen: That is correct, sir.

The Chairman: My understanding is that there has been some question raised about the use of the word "forthwith".

Mr. Cohen: That is correct sir. I think members in the other place in discussing this have been concerned, if I may put it this way, as to how hard the procedure is, how firm and how much they can be reassured that, once that procedure is activated by 60 members filing a written request, it will be carried through as quickly and as expeditiously as possible and definitely to a conclusion. That concern has been expressed, senator. All I can do by way of answering your question is to quote from a statement that the minister himself made in the other place just the other day, when he said, if I may read it:

I have listened carefully to the speeches and look forward to bringing forward at the committee stage some amendments to the parliamentary review provision...

which is the one we are talking about...

which will, in my opinion, make it meaningful along lines suggested by the hon. member for Peace River (Mr. Baldwin).

Beyond that I really cannot tell you what is contemplated, because no decision has been taken finally by the minister, who is only contemplating some amend-

ments which will meet the concerns that have been expressed in the other place.

The Chairman: Of course, we are considering this bill at a stage before it is officially before the Senate and we would not want, in any report to the Senate on this bill at this time, to express approval of the various items in the bill knowing full well that there is likely to be an amendment to one part of it. So we would have to make a reservation of some kind. We would have to bear in mind when "forthwith" does not mean "forthwith". That is about it.

Mr. Cohen: I am not certain, sir. That is the main part of the problem, "forthwith". There has been some general concern about how fast the other place will move in dealing with the matter at each stage of the sequence, and the minister, I understand, is proposing or considering something that will give that assurance.

The Chairman: Is there anything else in that bill that we should know about, Mr. Cohen?

Mr. Cohen: That is always a tough question, senator.

The Chairman: For one thing, we have changed the tax law in certain particulars and we have provided a broader base for reconsideration or review of those changes. How extensive is that right of review? Would it be so extensive as to include additions to that list of exclusions or a reduction in that list of exclusions?

Senator Flynn: I am afraid not.

Mr. Cohen: Mr. Chairman, I can answer it in this way: the review procedure contemplates that the motion that is brought before the other house can only contract the measure of the relief, the scope, the time, the breadth of the relief. In other words, it cannot expand the measure. It could not expand it to the service industries, for example. What it can do is to say, "It can only run for so long after today"; or it could say, "Instead of the reduction to 40 per cent it is a reduction only to 42 per cent"; but it cannot say that it is a reduction down below 40 per cent. To answer the specific question you put, senator, it could add to that list of exclusions but it could not subtract from them.

Senator Connolly: The key words in paragraphs (a), (b) and (c) of subclause (3) are "discontinue," "reduce," "restrict". Those are the three key words, and the reason obviously is that to do otherwise you would require a resolution.

Senator Flynn: No, I do not agree with that, because the house would merely express a wish, a recommendation to the minister, who would then at that time undertake, under this provision, to bring in this measure, if a resolution were needed.

Senator Connolly: That is right, a resolution could come subsequently.

Senator Flynn: So there is nothing to prevent us from adding "restrict or expand the application"—

The Chairman: Or "in any other manner restrict the application of the provisions"; but there is nothing in this review that would make any such motion law.

Senator Flynn: No.

The Chairman: There would have to be an amendment to this act.

Senator Flynn: The minister is under the obligation under this act to bring in a measure, and he would have to bring in a resolution.

Senator Connolly: There would have to be a resolution at that point.

Senator Flynn: Yes. I think it would be a good thing to provide for the expansion of the benefit of this act to other areas.

The Chairman: This is something we would have to ask the minister. It is a question of policy.

Senator Flynn: Agreed. It would be a question of opinion on our part, too.

The Chairman: Yes. We might express that opinion in our report, if we wish, but so far as any effective action in the bill is concerned we would have to get the minister's thinking because it is a question of policy.

Senator Flynn: The present minister!

The Chairman: Is there anything else in there, Mr. Cohen?

Mr. Cohen: Not in this bill, senator. We have talked about the important aspects of this bill.

The Chairman: We shall terminate our discussion on this bill? The committee at some time may hear the minister. Subject to that, we will report to the Senate. Agreed?

Hon. Senators: Agreed.

The Chairman: Bill C-193 involves quite a number of bits and pieces, Mr. Cohen.

Mr. Cohen: Yes, sir. Although there are a lot of bits of pieces there are two or three very important parts in this bill.

The Chairman: Let us take the tax reductions first, because they are most important ones in this bill.

Mr. Cohen: Yes, sir. There are three important tax reduction provisions in this bill. One is a proposal to increase the exemptions under the Income Tax Act. The exemption for an individual, which is presently \$1,500, is increased to \$1,600. That will be effective in 1973. The married exemption for a man and wife is increased from a total of \$2,850 to \$3,000 in total.

Senator Flynn: That is \$150 more a year for a married couple.

Mr. Cohen: Yes, sir.

Senator Flynn: Isn't that generous!

Mr. Cohen: That is under clause 11.

The Chairman: That is straightforward.

Mr. Cohen: Yes, that is a straightforward provision. The second important provision concerning reduction of taxes for individuals which is also effective in 1973 is a provision which reduces basic federal tax by 5 per cent of what it would otherwise be, subject to a maximum of \$500 and a minimum of \$100. Again that is a straightforward provision.

Senator Flynn: Five per cent means only 2 per cent over what was in effect for 1972. There was a reduction of 3 per cent which expired on December 31, 1972.

Mr. Cohen: That is correct, senator. On the other hand...

Senator Flynn: You continue this 3 per cent and you add another 2 per cent.

Mr. Cohen: I do not want to get into a debate with you, senator, but that is not fully accurate.

Senator Flynn: Well, correct me. I do not mind.

Senator Connolly: The other expired. That is the point.

Mr. Cohen: Well, it is not correct. Putting aside any policy considerations here, it is not correct in the context of the \$100 minimum. This is a very important factor.

Senator Flynn: But the \$100 is very important to how many people?

Mr. Cohen: I am looking for some figures that will tell you where it cuts in. In the case of a single individual with no dependents, the \$100 is operative, as opposed to the 5 per cent, up to an income of \$11,000, and in the case of a married person without dependents, up to \$12,491 and in the case of a married individual with two dependents up to \$13,091. That means a lot of taxpayers are benefiting from the \$100 as opposed to the 5 per cent or the 3 per cent.

Senator Flynn: If the taxpayer is earning more this year than he was earning last year, then there is a compensation there, I think, generally speaking with inflation and the increases in wages and income. Have you seen the answers I got in the Senate *Hansard* as to how many people filed income tax returns in 1969, 1970, 1971 and 1972, how many were taxable and what was the average tax paid by each individual? Have you seen that?

Mr. Cohen: I could get those figures, but I have not seen them.

Senator Flynn: It shows that because of inflation and the consequential increase in wages, people were paying more income tax in 1972 than they were in 1971, and they were paying more in 1970 than they were paying in

1969. Yet, when we had the Income Tax Reform Act before us, we were told this would exempt something like 385,000 taxpayers from paying any tax.

Senator Connolly: On the basis of the figures then available.

Senator Flynn: But we knew that inflation would correct the situation.

Mr. Cohen: Well, income, even apart from inflation, has risen significantly, senator.

Senator Flynn: That is right, but you buy less with what you get, and you pay more taxes even if you do get a reduction of 5 per cent or \$100.

Senator Connolly: The labour force has also risen.

Senator Flynn: I know that, but I wanted to get the relative importance of these "important events."

The Chairman: Well, I asked Mr. Cohen to tell me what were the reductions under the bill, and he was telling me what they are. Now he has told me two of them. What is the third?

Senator Connolly: Before going on, Mr. Cohen, would you mind identifying the clause where there is mention of the 5 per cent reduction and the minimum and maximum?

Mr. Cohen: Clause 17.

The third major item in this bill is, I believe, in clause 15. That is the proposal for indexing the personal income tax system in response to the inflationary spiral. That is scheduled to take effect on January 1, 1974. The other two provisions take effect this year, but that one is scheduled to take effect next year. I am referring now to clause 15 which begins on page 12 and follows over for a few pages after that.

The Chairman: Is this what we call the reflection of the inflation factor?

Mr. Cohen: Yes, sir. In mechanical terms what the proposal contemplates is as follows: One first establishes, using a past period of time, what the increase in the consumer price index has been. In other words, for 1974, one has to look back at the increase in the consumer price index as between September 30, 1972, and September 30, 1973. That is a twelve-month period ending just before the relevant year to ascertain what the percentage increase in the consumer price index has been. Having established that, there will be an automatic adjustment of the major principal exemption levels in the income tax, and by that I mean a single, married, and two children exemption—one for under 16 and the other for 16 and 17. This will also apply to the additional \$1,000 deduction for persons aged 65 and over and for blind and infirm taxpayers. Those exemptions will be increased by a percentage—4 per cent, 5 per cent, 6 per cent or 3 per cent depending on the increase in the consumer price index. Let us use 4 per cent as a hypothetical number. One then increases each of these exemptions by

4 per cent, if that is the figure. In addition one increases the tax brackets that exist in the personal rate schedule by 4 per cent as well. As you know we compute tax on a sort of slice-by-slice basis. If you pay X per cent on the first \$1,000 of your taxable income, and then you pay X plus Y per cent on the next \$1,000 and then X plus Y plus Z per cent on the third slice—each of those slices of \$1,000 is a bracket in our terms, and each bracket will be increased by 4 per cent because of the inflationary factor figure that has been established. The effect of that would be to eliminate the interaction in the personal income tax system of the progressive rate schedule—that is to increase the marginal rate of tax on each slice of income and inflation so that you'd be paying in the result the same percentage of your income.

The Chairman: If I may interrupt you for a moment, I understand how you arrive at the inflation factor, but then you come to the bracket of income earnings and you are going to add an amount equal to the inflation factor to the income bracket.

Mr. Cohen: To the bracket.

The Chairman: Then what you are doing really is this, you are offsetting or reducing the rate of tax and you are increasing the income bracket.

Mr. Cohen: I am not reducing the rate; I am reducing the income bracket. The rates in the rate schedule stay the same. They are not changed.

Senator Cook: In other words, if you are paying 12 per cent on \$10,000, and then 13 per cent on the amounts from \$10,000 to \$15,000, the 13 per cent will only come into play at \$10,400.

Mr. Cohen: That is correct, senator.

The Chairman: Let us follow that through. If a man has a taxable income of \$10,000 in 1974, and let us say the inflation factor you have arrived at is 4 per cent, now, tell me what would be the tax position in 1974? That is, if this is all you are dealing with—a taxable income of \$10,000 and an inflation factor of 4 per cent.

Mr. Cohen: You want to know what his actual tax would be?

Senator Walker: Just how you arrive at it.

Mr. Cohen: I would need to have a five-minute adjournment to work it through. Perhaps I could go back to the senator's example. In order to illustrate this I will need a situation in which there is a change. That income takes you through a rate bracket into another one. Let me construct a hypothetical tax system in which the rate schedule is as follows. There is \$10,000; there is 10 per cent on the first \$8,000 of taxable income and 20 per cent on the next \$2,000 of taxable income, so that we have fairly easy numbers to work with. Absent this: that man had a \$10,000 income which was a result of inflation. He would be paying 10 per cent on the first \$8,000, which is \$800; 20 per cent on the next \$2,000, which is \$400. The effect of this system is

to change that bracket of \$8,000 that I just spoke of, and the result would be that he will pay 10 per cent, not on the first \$8,000 of his income, but 10 per cent of the first \$8,320 of his income, if my mathematics are correct, and 20 per cent on the excess, which is \$8,320 subtracted from \$10,000.

Senator Cook: \$1,680.

Mr. Cohen: That is how the system will operate. The important thing is, the effect will be that the man will be left with the same purchasing power as he would have had had there not been inflation. What we are really trying to assume is that that \$10,000 of income is really a wage increase, for example, that has been granted in a union contract as a result of an increase in the Consumer Price Index. It is not a real growth in income. It is an increase in his income that he has been given by virtue of a contract and by virtue of negotiations to reflect the inflation that has taken place. We do not want to tax him longer on a higher bracket just because he got an inflationary rise in his own income. Everybody's income is rising in a sense as a result of inflation.

The Chairman: Is that another way of saying the net purchasing power representing the net amount of money the man has left in 1974 would not be less than he would have left in 1973?

Mr. Cohen: That is correct, provided his increase in income is the same as the rate of inflation. That is the objective here.

Senator Cook: He also benefits from the increased deductions.

Mr. Cohen: That is correct, but all of that gets into the mix to produce the statement that his net purchasing power is the same as it was before. Things cost 4 per cent more than they used to, presumably, and he will be left net after taxes with the same net purchasing power, 4 per cent more.

The Chairman: Is it correct to call this a reduction in taxes? Is it not an equating of his income, having regard to the change in the Consumer Price Index? It is not really a reduction in tax, is it?

Mr. Cohen: Well, it can be. If a man has had an increase in income he will pay the same percentage of tax as he paid before. If the cost of living has risen but his salary has not risen, he will pay in absolute terms less tax dollars than he did before. There may well be an actual reduction in tax. If his income has not kept up with the cost of living his actual tax liability will go down to get the same result, so that he has the same net purchasing power that he had before, but there is an absolute net reduction in taxes.

The Chairman: If you assume that the tax rate between the two years remains constant.

Mr. Cohen: Yes, sir.

The Chairman: If he has less income in the second year than in the first year he will, in any event, pay less tax.

Mr. Cohen: But, you see, he has in nominal terms the same income. He had \$10,000 in 1972. He is a pensioner; he is still receiving \$10,000 in 1973; there is no escalation for him. He has got the same amount of income, but he will pay less tax. He has the same amount of nominal income, but he has really got less real income, and we are adjusting for that.

The Chairman: I understood you to say you were not changing the rate of tax.

Mr. Cohen: That is correct. The mechanical way of getting at this is not the change, the 10 per cent on his first \$8,000 and 20 per cent on the next \$2,000; it is to change the bracket. The 10 per cent and the 20 per cent all stay there, but the size of the bracket is changed.

Senator Cook: A man with a constant income will benefit only from the increased deductions.

Mr. Cohen: No, sir. A man with a constant income of \$10,000 will benefit, first because the exemption is bigger; but he is now going to pay 10 per cent, not on \$8,000 in our old example, but 10 per cent on \$8,320; that is less tax. On that \$320 extra he would otherwise have paid 20 per cent. If we did not index he would pay 20 per cent on everything over \$8,000. He would have paid 20 per cent on the \$320.

Senator Cook: He does not get \$320.

Mr. Cohen: He has got \$10,000 of income.

Senator Cook: If he is constant he does not benefit.

Mr. Cohen: Yes, he does.

Senator Flynn: The increase in the Consumer Price Index is on the net income, but the decrease provided here is on the tax alone.

Senator Beaubien: Go over it again.

Mr. Cohen: I lost it, but I think the light went on for the senator behind you.

Senator Flynn: Suppose I have a \$10,000 income. I have \$1,000 tax. I am left with \$9,000. The increase in the cost of living is 4 per cent. That will be 4 per cent on \$9,000 for me.

Mr. Cohen: Yes, that is right, that is purchasing power.

Senator Flynn: But your adjustment will be made on the rate of tax; it will be made only on \$1,000.

Mr. Cohen: No. If you had \$9,000 net in 1972 the result of this exercise will be that you will have enough money in your pocket to produce the same net purchasing power; you will have, in effect, 4 per cent on \$9,000; you will have \$9,360.

Senator Flynn: But my reduction will be calculated only on the rate of tax.

Mr. Cohen: Yes. We are taking less tax, but the effect is to leave you with \$9,360.

Senator Flynn: If it is 4 per cent on \$1,000 I get only \$40.

Mr. Cohen: No, sir. I know that is where you are at, but that is not correct.

Senator Flynn: Just for clarification, let me refer you to clause 15. The figures mentioned are \$1,600, \$1,400, \$550 and otherwise. Are they not exemptions?

Mr. Cohen: Yes, sir.

Senator Flynn: Are you adjusting the exemptions or the rate?

Mr. Cohen: Both. As I mentioned at the beginning, we will be adjusting the principal exemptions, the \$1,600, \$1,400, \$550 and \$300. We will also be adjusting the rate brackets. This will be helpful to people not just at the bottom but all the way up through the income scale.

Senator Flynn: It will increase the exemptions and it will decrease the rate by the increase in the salary index.

Mr. Cohen: We are not decreasing the rates. Perhaps we are having a very semantic and technical discussion. We are increasing the rates, we are increasing the brackets. A bracket is 10 per cent on so much income. We are not decreasing the per cent; we are increasing the bracket.

Senator Flynn: Or the exemptions.

Mr. Cohen: An exemption is like a zero rate bracket. We are increasing all the brackets, including the zero brackets; all of the exemptions and the brackets are increased.

Senator Flynn: What will be the figures that are changed? The exemptions?

Mr. Cohen: Yes sir.

Senator Flynn: Only?

Mr. Cohen: No, sir. The exemptions will change and the width of the bracket will change. The first bracket that we will have for 1974 is 12 per cent on the first \$500, for example. We are not touching the 12 per cent, but the \$500 of income that it is applying to will get bigger.

Senator Flynn: But you get more than.

Mr. Cohen: No, because of the amount above it.

Senator Connolly: Because the next bracket is changed.

Mr. Cohen: The rate of tax on the next bracket is applying to less income.

Senator Connolly: The rate of tax on the higher bracket is applied to the lower amount of income.

Mr. Cohen: Exactly.

Senator Connolly: Because the lower bracket has been increased.

Mr. Cohen: Thank you, senator, I could not put it that way; I was groping.

It is a bit of a mathematical puzzle, I suppose, in a sense. If you had a blackboard to figure it on—

Senator Walker: The absolute tax collected is less in the circumstances.

Mr. Cohen: Depending on what happens to the income, the absolute tax is less.

Senator Walker: How do you make that up in general income?

Senator Connolly: For the above reason.

Mr. Cohen: I suppose that if he needs more money, Parliament will have to provide it.

The Chairman: I suppose it means more taxpayers.

Senator Walker: And bigger incomes.

Senator Cook: They are also collecting more now than they did collect.

The Chairman: Have you any figures that would reflect the basis of the first year of operation under this system?

Mr. Cohen: I do not think so, senator. The difficulty with this is that one would have to have a sense of where the price index is going.

The Chairman: Well make an assessment.

Mr. Cohen: One could make an assessment, but I cannot do the figures now.

Senator Flynn: The experience of the last four years would suggest you are not going to lose.

Mr. Cohen: Not going to lose?

Senator Flynn: The government is going to collect as much from year to year.

The Chairman: Wasn't this supposed to cure that problem of the individual within a higher bracket, because of the inflationary process? This is supposed to correct that?

Mr. Cohen: Yes, I say it does.

The Chairman: You say it does?

Mr. Cohen: Yes.

Senator Lafond: I think the last question was the one I intended to ask and I did not hear the complete question or the replies. Let me put it this way. Regardless of

the amount of the reduction, whether it is major or minor tax, is this an essential element of this item that it guarantees the taxpayer against being bumped into a higher bracket at a higher rate by purely inflationary factors?

Mr. Cohen: Yes, sir, that is exactly correct.

The Chairman: We have generated a lot of confusion, established ourselves as great mathematicians and finally reached a conclusion which, if we were asked to restate it, some of us, including the chairman, might find it difficult to do so at the moment. That is not the fault of Mr. Cohen, and we will know the real answer when we come to file an income tax return!

Senator Connolly: I think we should declare Senator Cook a champion subtractor.

The Chairman: If he wants a decoration, we will settle that.

Senator Cook: Will it put me in a different bracket?

The Chairman: It would be a mathematical award.

Senator Laing: There will be a new table then, I take it, every year?

Mr. Cohen: On the administrative side of this, Senator Laing, yes, this will be automatically put out by the Department of National Revenue, as new deduction at source tables.

Senator Laing: On the basis of the experience of the year previous?

Mr. Cohen: That is why we took September 30. It provides enough time between September 30, 1973 and the commencement of 1974, three months, to make the necessary computations, print the schedules and get all deductions at source tables, have them distributed by the start of the year. In addition, as I am sure you are all aware, regarding our tax tables, on the tax returns if you have less than \$12,000 of income and it is all salaried income, you do not have to work your way through long calculations. There is a table that you can go to and pick off your tax liability. Once this system is incorporated, that will be simpler than the other one, which was more complicated. These brackets will no longer have the nice round numbers of \$1,000 or \$2,000 but they will be detailed. To help alleviate that problem, we have amendments in this bill calling for establishing that table, not at \$12,000 but at \$24,000, all the way up to \$24,000 of wage income, so that for the large percentage of taxpayers in the country they will not be obliged to make that calculation of all those odd looking numbers but they will just pick up this table of liability and pick it off that.

Senator Cook: Will you be able to even off the dollars?

Mr. Cohen: Yes, it will not be in pennies.

Senator Cook: Not 12 cents or 15 cents?

Senator Flynn: The odds and the evens?

Senator Cook: How are these done now, to the next dollar?

Mr. Cohen: Upwards to the nearest dollar. The bracket will be upgraded to the next full dollar.

The Chairman: Can we go back now and start with the bill itself, and see how far we can get? Would 4.30 be a good time to adjourn?

Hon. Senators: Agreed.

The Chairman: On clause 1 of the bill, my usual question is, you are amending a section of the existing act. Therefore, what was the law before this amendment becomes effective? What is the purpose of the amendment? Is it relieving, or does it impose additional tax, or any tax that was not there before?

Mr. Cohen: This amendment in clause 1 is relieving. What it provided for was that, in the case of taxes paid to a foreign state—not to a foreign country but to a foreign state, Michigan, Illinois—they were deductible, in computing income. This clause repeals the deduction, the ability to deduct it from income. There is another clause later on in the bill, which provides the right to claim that foreign state tax, not as a deduction but as a credit against taxes payable. So it is much more valuable now.

The Chairman: But it does defer the time in which you enjoy the benefit?

Mr. Cohen: No, sir. It is in the course of the year. Taking a typical situation, take a person who lives in Windsor and works in Detroit and pays state taxes to the State of Michigan. Previously, last year, he could only take those taxes as an expense, as a deduction from his income. Now, as a result of this section, and two or three others we will come to, instead of being able only to claim as an expense he can actually claim it as a credit against the tax he would otherwise pay. That is definitely more valuable to him.

Senator Connolly: One instead of the other?

Mr. Cohen: Yes, sir.

Senator Connolly: He can claim it as a tax credit, rather than as a deduction.

Mr. Cohen: Yes, which is much more valuable. This clause repeals the ability to claim it as a deduction. There is another clause that gives him the right to claim it as a credit.

Senator Beaubien: Does it work out to his benefit?

Mr. Cohen: Oh, yes, sir.

Senator Beaubien: Suppose his taxes were \$10,000 and his state tax was \$1,000, then he would be taxed here on the \$9,000 in Canada. Now he pays tax on the \$10,000 in Canada, and you show the \$1,000 which he has paid as a credit.

Mr. Cohen: Yes.

Senator Beaubien: I see. That is a benefit.

Mr. Cohen: If his marginal rate is 40 per cent, his deduction is worth \$400, his credit is worth \$1,000.

Senator Beaubien: I understand now, thank you.

Mr. Cohen: That is the effect of clause 1 of the bill—section 8(9) of the Income Tax Act.

The Chairman: It is not clause 2?

Mr. Cohen: No, clause 2 deals with something else.

The Chairman: You are saying that the repeal in clause 1 of the bill, and making the section applicable to 1973 and subsequent years, has this effect?

Mr. Cohen: This clause, the repeal of section 8(9) of the Income Tax Act, eliminates the ability to deduct it. Elsewhere, there is a provision for the credit.

The Chairman: Do you refer to that other section?

Mr. Cohen: Clause 18 of this bill provides the credit.

Senator Cook: That is on page 16?

Senator Connolly: It only applies to the tax paid to the government of any country or to the government of any state, so that if you have a U.S. credit and a Michigan credit you can claim both.

Mr. Cohen: Previously you could only claim the U.S. credit, but we are now adding the Michigan credit, yes.

Senator Flynn: Are we changing the treaty between Canada and the United States in this connection?

Mr. Cohen: No, it does not require a change.

The Chairman: It does not depend on any treaty arrangement.

Senator Flynn: I thought the credits were given under agreement between the two countries.

The Chairman: Only in this act.

Mr. Cohen: We have always in our own statute given credit for foreign taxes, but whether it was the United States or any country we usually meant the national tax. But now we are extending it to pick up state taxes and municipal taxes as well. It is mainly of interest to people living on the border of the United States, though.

Senator Flynn: We have the same problem in Canada with respect to foreign people who pay tax here, because of the provincial taxes—at any rate, in Ontario and Quebec.

The Chairman: Clause 2, Mr. Cohen.

Mr. Cohen: Clause 2 concerns the rules applying to what we call thin capitalization. This is a rule which prevents the excess deduction of interest in the case of foreign-controlled subsidiaries, that is, Canadian companies which are controlled by foreigners.

The Chairman: That is, where there is a ratio of debt to equity of more than 3 to 1, then the difference in interest is treated as income, as a dividend.

Mr. Cohen: It is not allowed as a deduction, but that is the right rule.

The Chairman: That is the effect of it, then, is it not?

Mr. Cohen: Well, it is more than treating it as a dividend. It also increases the corporate tax.

The Chairman: Yes.

Mr. Cohen: You are quite right, though, sir.

The Chairman: Is this a general provision or is it limited to certain industries?

Mr. Cohen: By and large it is a general provision applying to all foreign-controlled Canadian subsidiaries. The first amendment in subclause (1) is quite a technical one just to close off what might have been a loophole. We are only looking at debtor-creditor relations between the subsidiary and its parent. We are not looking at third party loans. We are only concerned about the financing of the subsidiary by the parent company and the amendment here just picks up companies that are related to the foreign parent. In other words, we do not want to have this rule defeated in such an easy way as was the case before when a foreign parent could not lend directly to the Canadian subsidiary but could lend to its own U.S. subsidiary which would in turn make a cross loan to the Canadian subsidiary. This is a slight tightening of the rule which, essentially, prevents a loophole. There was a drafting anomaly which should have been picked up in the first instance.

The second change is quite significant, however. It is the exempting from the application of these rules entirely the aircraft industry in Canada. Perhaps that is where your question was aimed, Mr. Chairman.

The Chairman: That is what I was thinking of, because the aircraft industry is in a category of its own. It needs a lot of money and cannot get it by way of equity.

Mr. Cohen: That is right. It finances itself in a most unusual way and is also an industry which the Canadian government works very hard to foster. Prior to this it seemed to be a self-defeating proposition, because the government was encouraging the industry and then was applying this rule to it. In this bill the aircraft industry is being exempted from the application of these provisions.

The Chairman: Would you go onto clause 3, please, Mr. Cohen.

Mr. Cohen: Clause 3 is the other side of this foreign-credit-versus-deduction issue. The first clause we looked at had to do with employment income. This clause has to do with business income. It is the same exercise in which we are no longer treating state taxes as deductions but as an absolute credit. This is the same exercise as clause 1.

Senator Flynn: Just from a technical standpoint, why would you draft paragraph (2) in this way: "This section is applicable to the 1973 and subsequent taxation years"? Why would you not say, "This section is applicable from the 1st of January, 1973."?

Mr. Cohen: I could not answer that question, senator. You would have to ask the Department of Justice why they drafted it in the particular way.

Senator Flynn: There seems to be a promise of no amendment to this provision in the future.

The Chairman: Don't rely on that!

Senator Flynn: I do not rely on it, but it is either a promise or a provocation.

Mr. Cohen: I think it is neither, senator, but just a drafting style.

Senator Flynn: It would have been sufficient to say, "From the 1st of January, 1973."

Mr. Cohen: You are asking for a legal interpretation about a statutory drafting, and I have ceased to practise law.

The Chairman: So long as we know the meaning, that is enough.

Senator Flynn: I know.

The Chairman: Are you finished with clause 3?

Mr. Cohen: Clause 4 is a loophole closing amendment. It applies where an annuity is purchased with the proceeds of a deferred profit-sharing plan which has had its registration revoked. We are in a fairly technical area here, but if I could simplify it, moneys coming out of a deferred profit-sharing plan are supposed to be taxed. They have been deducted on the way in and should be taxed on the way out. Often you get an annuity. That is the way you take the proceeds from a deferred profit-sharing plan as an annuity, and the normal rule is that as these moneys reach your hands they are taxed. Now, there are certain kinds of deferred profit-sharing plans called revoked deferred profit-sharing plans which means that there are plans which no longer comply with the rules of the game and are therefore no longer to enjoy tax benefits.

As a result of the drafting flaw, if you will, the receipt of an annuity out of a deferred profit-sharing plan which has been revoked has not been getting taxed at all, although the receipt of an annuity from a deferred profit-sharing plan which was perfectly proper and still qualified was, as it was intended to be, being taxed. That is an anomalous situation. If anything, it should have been the other way around, I suppose. But it was really intended that all dispositions out of deferred profit-sharing plans, whether revoked or not, should be taxed, but as a result of the faulty drafting the revoked plan escaped taxation and this just brings it back to tax as was always intended.

Senator Connolly: May I use an example, Mr. Cohen? In the case of a revoked profit-sharing plan which is, let us say, in being in a Canadian company, the capital payment or the amount that the employee has in there might come to \$5,000. While it is revoked, that is technically paid to him. If he puts it into an annuity, then he gets taxed as he gets his annuity payments, but he does not get taxed on the \$5,000 payment that is made to enable him to buy the annuity. Is that right?

Mr. Cohen: The annuity is really what is coming out of the plan in the first place. He may take it as an annuity, but in principle, Senator Connolly, you are quite correct. In principle he ought to have been taxed as and when he received the \$5,000. Just because the plan is revoked should not mean that we do not tax the individual on what he has in that plan. A revoked plan means that you cannot deduct contributions to it any longer and the income of the funds in the plan are subject to tax, but you do not get taxed on that \$5,000 at the time of revocation. What was happening, because of the way the law was drafted, was that you were not going to get taxed on it when you got it, when you actually received it, and this just closes up that situation.

The Chairman: But if they carried that \$5,000 into a qualified plan—an annuity—then there would not be any tax until they started drawing out?

Mr. Cohen: That is right, and we are not doing anything different here.

The Chairman: You are not changing it then?

Mr. Cohen: No, we are just trying to tax the annuity out of the revoked plan in exactly the same manner and at the same time as we would tax it coming out of a qualified plan.

The Chairman: Does that mean that you are trying to estimate in the revoked plan the difference between what the capital is and what the income would be on the annuity, and you are going to tax the income?

Mr. Cohen: No, we are going to tax everything in the plan.

The Chairman: Well, supposing he has \$5,000 of capital in the plan?

Mr. Cohen: Well, you see, senator, you cannot have that kind of capital in a plan of this sort. It is like a pension plan. Everything in that plan is income to you when it comes out.

The Chairman: When it comes out, but not while it is sitting there.

Mr. Cohen: No.

The Chairman: The plan is revoked, so it is no longer a recognized plan and nothing more can be contributed to it to get a deduction.

Mr. Cohen: That is right.

The Chairman: So it is sitting there with money in it, and the character of that may be made up of both income and capital.

Mr. Cohen: Yes.

The Chairman: Are you proposing that on the way out the whole thing is income?

Mr. Cohen: Yes, sir. That is precisely what it should be.

The Chairman: Why?

Senator Connolly: That applies if you take it out that way. But if I take the \$5,000 out in 1973, the whole lot of it, and spend it, then that is income.

Mr. Cohen: That is right.

Senator Connolly: But if, as I understood you to say, that \$5,000 from that plan, now revoked, is invested in an annuity and I get \$100 a month for the rest of my life, then it is the \$100 a month that is going to be taxed, and nothing else.

Mr. Cohen: That is correct.

The Chairman: But there may be \$5,000 in that revoked plan which represents an accumulation of capital gain.

Mr. Cohen: But the \$5,000 that got in there could only have got in in one of the following ways; it was deducted when it was contributed, and it earned income and no tax was paid on that in the plan, or else it was a capital gain.

The Chairman: Yes, you made a capital gain.

Mr. Cohen: Which was not taxed. But the capital gain is not the same as the capital in the fund.

The Chairman: I recognize that, because I know these three elements. But you are now proposing to tax the three elements.

Mr. Cohen: That is right. We would tax it if the plan had not been revoked. You see your problem is, senator that we should not be taxing capital gains undistributed.

The Chairman: Not at the income rate.

Senator Flynn: But in fact you do tax the capital gain as income.

Mr. Cohen: Yes. One could argue that one should not do that, but there is no reason why a revoked plan should have a better deal than a qualified one.

Senator Flynn: As long as you can invest it in a new plan.

Mr. Cohen: We are just trying to put the bad apple in the same position as the good apple.

Senator Flynn: You have a different technique here. This section is applicable with respect to an annuity payment which ceased after February, 1973. You don't say "and in subsequent years."

The Chairman: Well, in the rules of statute drafting that have been devised by the Department of Justice, they may have exceptions which permit variations like this.

Mr. Cohen: I suspect I should not comment on that.

Senator Flynn: Well, I have my own views.

Senator Connolly: If this were done by computer it would have the same wording as subclause (2) of clause 3.

Mr. Cohen: I think the difference, if I might hazard a guess, is as between the dates and the taxation year. When they talk about the taxation year, they say "this year and subsequent years." When they are talking about any other length of time, they take the actual date.

Senator Flynn: It seems that the draftsmen have listened to the debates which have taken place in the house or elsewhere.

The Chairman: Shall we move on to clause 5?

Mr. Cohen: Clause 5 is a relieving clause. We have in the Income Tax Act an item called the "income averaging annuity". If you realize a lump sum—and a capital gain is a classic example—which would add greatly to your income in one single year and push you up the progressive rates, then in order to alleviate that we have a provision which says you can spread it forward by purchasing an income averaging annuity contract. I think the last time I was here we discussed this also. The amendment here does one thing only; it expands and adds an item to the list of things, the income from which you can use to purchase an income averaging annuity, and the additional item is the proceeds of the disposition of a resource property.

Senator Laing: This is a release for hockey players.

Mr. Cohen: Not this particular amendment, but in general, yes. This particular amendment simply adds resource properties as an item of income that can be used to purchase an income averaging annuity contract and so spread the tax burden into the future.

Senator Flynn: What is the difference you have to earn by way of capital gains or capital income—is it more than 25 per cent than in the previous year?

Mr. Cohen: No, senator, that is the general averaging provision and that spreads your income backwards. This amendment is designed to deal with lump sum as it is received—a capital gain, a lump sum payment from a retirement plan, the sale of a book, or something like that and now the resource property.

Senator Flynn: A revoked annuity would qualify if you take it out and don't put it back in.

Mr. Cohen: Yes, and you can take that lump of income, and instead of paying tax on it now, you can extend it into the future and let it come back at you then.

The Chairman: What base do you use there? Do you just divide it by five?

Mr. Cohen: No you can buy that contract for as long as you want, including a life contract. You can spread it forward one year, five years, ten years or for life.

The Chairman: So, if I were a hockey player and I signed a contract for \$1 million payable over a period of ten or 15 or 20 years, which might even go beyond my useful service life as a hockey player—I could still do that and my tax would be the average over 15 years of that money.

Mr. Cohen: No, no. First of all, you are talking about a situation where a man has contracted to receive the sum over a number of years. We are talking about a situation where he actually gets it all in one year.

Senator Flynn: If he gets a bonus, for example.

Senator Molson: Bobby Hull gets \$1 million for signing.

The Chairman: Well, Mr. Cohen, if you get \$1 million for signing a contract, then that has to be the type of case.

Mr. Cohen: That happens to be one type that does not qualify. But let us suppose there is a capital gain, or let us take the one we are talking about where you sell a mining property and now you have a large sum of money on your hands as a result of a lot of effort and you are going to pay a high tax on that. Now you can go to a trust company or to an insurance company and buy an income averaging annuity contract. In other words, you take that money and turn it over and you get back an annuity. Now you can set the terms of that annuity. We are not averaging your rate; what we are saying is that as you get it we will tax it at the marginal rate.

Senator Connolly: What I want to know is this. You talk about the proceeds of a resource property. Now, how do you get the words "resource property" in there? Do you get it out of section 59?

Mr. Cohen: Yes, section 59 deals with resource properties.

Senator Connolly: That is what I want to know. That is relieving.

Mr. Cohen: Clause 6 is a relieving provision designed to allow custom processors of natural resources to claim depletion. This is an important point. Previously you had to own the resource in order to get deduction profits from that resource in order to take the benefit of depletion. This amendment extends that to allow not only the people who own the resource, but also people who process it or who process not only their own resources but somebody else's resources.

The Chairman: This rings a bell.

Mr. Cohen: I thought it might.

The Chairman: We raised this question in our hearings on Bill C-259.

Mr. Cohen: Yes, you did, sir.

The Chairman: You did not do it for us at that time. This is another thing you are catching up on now, is it?

Mr. Cohen: We are slow but steady, sir.

The Chairman: This really reflects to the credit of the department, because we were given some undertakings and we are glad to see so many of them are finally getting accepted. Who knows, next year you may accept a lot more.

Mr. Cohen: It is the minister.

Senator Flynn: It is the retroactive influence of the committee.

The Chairman: This just shows how potent a force it is.

Senator Connolly: When will that be effective? It is 1973. You did not carry back to the tax reform.

Mr. Cohen: No, sir.

Senator Connolly: The word "or" in subsection (1)(a) of section 65, which is clause 6 of the bill, means that they both cannot get it.

Mr. Cohen: They both cannot get it on the same income.

Senator Connolly: The extractor makes his income, he gets his depletion on that income. The customs processor then takes that raw material and treats it in some way, and that income is subject to depletion.

Mr. Cohen: Yes, sir.

The Chairman: Clause 7.

Mr. Cohen: This is a relieving amendment dealing with an amalgamation. We had a rule dealing with what we call a rollover, in the course of an amalgamation. The policy was that if you had a 25 per cent interest in the results of the amalgamation and there had not been a change in the economic interest, then you should not be subject to capital gains tax. There was a rule in the act that dealt with that. The way we were measuring it was, you had to have 25 per cent of every class of common shares; that was the basis. A specific example arose in which somebody clearly had a continuing economic interest, but it turned out that they just did not have 25 per cent of every class of common shares. This amendment adds an addition to the existing rules and says either you have 25 per cent of every class, or you have 25 per cent of the fair market value and the votes of all the various classes of common shares taken as a whole. It is relieving in the sense that it extends the rule. It is an odd factor situation.

Clause 8 again is principally relieving. Once again we are back in the area of how to treat the winding up of a wholly-owned subsidiary. The basic policy of this was

that it was to be a non-event for tax purposes where it was a wholly-owned subsidiary being wound up into a parent company. Frankly, we have had a good deal of difficulty in getting these rules to work correctly, and we have had long discussions with people on the outside.

These amendments are designed to further clarify the situation and remove some anomalies. On balance they are relieving. There is one tightening aspect of an amendment, to eliminate an obvious loophole. I am hopeful that we have now got them down.

The Chairman: It is really a problem of administration, is it not?

Mr. Cohen: Yes, it is a problem of a technical set of rules designed to accomplish a purpose; everybody knows what the purpose is, but it is just part of the complexities of the corporate world to find a right set of rules.

Senator Flynn: This is applicable to the 1972 and subsequent taxation years?

Mr. Cohen: Yes. It goes all the way back.

Senator Flynn: I am coming to clause 9 now.

Mr. Cohen: That is part of the same story. My comments just now are applicable to clause 9 as much as to clause 8. This is the whole question of winding up a subsidiary. One aspect of it that is tightening does not take effect until May 29, 1973, so there will be no retroactivity. The tightening element is really to eliminate an obvious loophole. There was a double counting to the taxpayer's advantage, and we have simply reduced it to a single counting; there is no advantage, and no disadvantage either.

Senator Flynn: Subsection (3) says:

This section is applicable with respect to dispositions of capital property after January 31, 1973.

Senator Connolly: How do you see these loopholes? Do you get a case before you that is obviously unfair? Do they complain and come in and talk to the tax department first, and then they refer it to you? Is that the process?

Mr. Cohen: Not often in the case of loopholes, senator. We get that more frequently in the case where it is pinching too tight. In the case of loopholes they are harder to come by.

Senator Connolly: You have to find those yourself.

Mr. Cohen: To digress for one moment, we found this one quite by accident in a sense. We were amending the section to simplify and clarify these rules about liquidations. We were quite innocent about this whole thing. In Bill C-170, which was before this committee a few months ago, there was a series of amendments on this point. A result of those amendments, quite unbeknown to us, was to close a loophole that we did not even know existed. We closed it, and because we did not know it existed we took the amendment all the way back to January 1, 1972, because we thought we were simply

simplifying and clarifying, making the rules simpler. It turned out that there was a loophole; people had taken advantage of the loophole, and they were now thoroughly upset about losing the loophole, but they had been caught in the extreme because we took the rules back to January 1, 1972. We have deal with that problem. That is why you will find in one of the subsections the date May 29. We let the loophole stand until May 29.

Senator Connolly: That is fair enough, because the act should be interpreted strictly.

Mr. Cohen: And not retroactively. That is why we let the loophole go until May 29.

The Chairman: After all, it is the law this is changed.

Mr. Cohen: That is right. We find loopholes in odd ways.

The Chairman: I am glad to see that you are actuated by such laudable motives.

Senator Flynn: Always.

The Chairman: Always. Mr. Cohen is all right. Let us now pass on to clause 10.

Mr. Cohen: Clause 10 is also part of this business of foreign taxes and deductions versus credits. This is a change to give trusts the opportunity to take credit for estate taxes as opposed to taking deductions. It is the same kind of discussion we had on clause 1 and another clause.

The Chairman: So when we were dealing with clause 1 we should also refer to clause 10?

Mr. Cohen: Yes, sir.

Senator Connolly: Do you say this means the trusts get the same treatment on this as individuals and corporations?

Mr. Cohen: Yes, sir.

The Chairman: We do not want to overwork the members of the committee. We have been busy today, having started at 9.30 this morning. Perhaps this would be a convenient time to adjourn. We have a meeting at 9.30 in the morning, when we will have two or three groups appearing on the takeover legislation. We could certainly be finished with them in a couple of hours. Is it the desire of the committee that we hear further from Mr. Cohen, if he is available? That is the first question.

Mr. Cohen: Tomorrow is all right; tomorrow is an Opposition day.

The Chairman: At 11.30 tomorrow morning we might then hear from Mr. Cohen for an hour. If he were available from 11 o'clock on, we might get started a little earlier.

Mr. Cohen: That is fine, Mr. Chairman.

The Chairman: Thank you very much, Mr. Cohen. We will adjourn until 9.30 tomorrow morning.

The committee adjourned.



FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 13

THURSDAY, JUNE 21, 1973



Seventh Proceedings on the Examination of the Document Intituled:

“Foreign Direct Investment in Canada”

(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa</i>	*Martin
<i>West</i>)	McIlraith
Cook	Molson
Desruisseaux	Smith
*Flynn	Sullivan
Gélinas	Walker—(20)
Haig	

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 16, 1973:

"The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the document entitled "Foreign Direct Investment in Canada", tabled in the Senate on Monday, 15th May, 1972, and the subject-matter of any bill arising therefrom, in advance of such bill coming before the Senate, or any other matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

Minutes of Proceedings

Thursday, June 21, 1973.
(13)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to examine and consider the document intituled: "Foreign Direct Investment in Canada".

Present: The Honourable Senators Hayden (*Chairman*), Blois, Connolly (*Ottawa West*), Cook, Flynn, Gélinas, Laing, Molson, Smith and Walker. (10)

Present, but not of the Committee: The Honourable Senators Lafond, Forsey and Heath. (3)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Messrs. Charles Albert Poissant, C.A., Charles B. Mitchell, C.A., Robert J. Cowling and T. S. Gillespie, Consultants.

The following witnesses were heard:

Sinclair Radio Laboratories Limited:

Dr. George Sinclair.

Investment Dealers Association of Canada:

Mr. Andrew G. Kniewasser,
President of the Association;

Mr. R. C. Meech, Q.C.,
Counsel to the Association;

Mr. Allan H. T. Crosbie, Assistant
Vice-President, Wood Gundy Limited,
A member of the Association.

In attendance:

Investment Dealers Association of Canada:

Mr. John Byrne,
A. E. Ames & Co. Limited,
A member of the Association;

Mr. L. K. Wright,
Counsel to the Association;

Mr. D. M. Caston,
Manager of the Association.

At 11.45 a.m. the Committee adjourned to the call of the Chair.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Thursday, June 21, 1973.

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the document entitled "Foreign Direct Investment in Canada".

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us Dr. George Sinclair, of Sinclair Radio Laboratories Limited, as our first witness this morning.

Dr. Sinclair, would you care to make an opening statement before we get into a discussion of your brief?

Dr. George Sinclair, President, Sinclair Radio Laboratories Limited: Mr. Chairman and gentlemen, before I start talking about my brief, I would like to say a word about myself, since most of you do not know me. I should like to point out that I have a rather unusual background in relation to the problems that are facing us this morning.

Specifically, I am the President of Sinclair Radio Laboratories Limited, which is a small Canadian-based company of the multinational type. It is an innovative company. We have a subsidiary in the United States and have joint ventures in other parts of the world. So I can speak on the parent-subsidiary relationship on the basis of a little experience.

I am also a part-time professor of Electrical Engineering at the University of Toronto, and, perhaps most important of all, I am what I consider to be an innovator. I have a record of innovation that I think has some relationship to the discussion this morning, namely, that I have played an active role in the creation of at least three industries. So I speak of innovation on the basis of accomplishment.

Specifically with relation to the bill under consideration, I should like to make three main points. You have copies of my brief, and you can get details from that. However, I should like to highlight three points. First of all, I should like to suggest that the government has no intention of tackling the problem of foreign domination of our Canadian industry. In the last election, the voters made it very clear that they expected the government to take some action, and this bill is the result.

I suggest that the government clearly does not have the intention of tackling the foreign domination problem. Let me explain that. First of all, if you read the material which the Minister of Industry, Trade and Commerce issued at the time he introduced the bill, he said the following—

Senator Walker: From where are you quoting?

Dr. Sinclair: It is in the brief, on page 4:

The investor may also take the initiative to offer specific commitments to the government about his intentions, particularly any undertakings which could bring significant benefits to Canada. For example, he might make undertakings to locate new research and development in Canada, or to expand proposed operations in some other way.

As I read the last sentence, "to locate new research and development in Canada, or to expand proposed operations in some other way," the minister is saying that the foreign investor, in order to get approval, has to undertake to dominate the section of industry in which he is proposing to invest. "... to locate new R and D," is simply saying, "Make your company stronger, make it more difficult for the Canadian entrepreneur. ... to expand proposed operations in some other way" is simply saying, "Make it difficult for the Canadian entrepreneur." This is saying very clearly that the foreign investor has to undertake to dominate the segment of industry in which he is proposing to invest.

The Chairman: Do you attribute that meaning to the words at the end of that sentence, where he talks about, "or to expand proposed operations in some other way"?

Dr. Sinclair: And also the location of research and development.

The Chairman: "... in some other way" than research and development?

Dr. Sinclair: Yes.

The Chairman: Where do you get the significance that the qualification must be the purpose to dominate the Canadian industry? Where do you draw that conclusion?

Dr. Sinclair: Because what he is saying is that the proposed investment must be made as strong as possible. This is what he is saying. Do you not agree with that?

The Chairman: I do not take the same meaning out of it.

Dr. Sinclair: Then let me go on. I can amplify on this point. The minister also went on to indicate that he is going to introduce a complementary bill. He said:

The review process is complemented by positive steps to support the development of strong Canadian controlled business.

I attach particular significance to the words "Canadian controlled". He is not talking about Canadian owned, but Canadian controlled.

The Chairman: This is what we have been ordinarily calling, a package of incentives. Would you say that description was accurate?

Dr. Sinclair: I am not too sure I know what you mean by "a package of incentives."

The Chairman: The minister in his speech indicated that he was contemplating this bill to be one in a series of bills, the chief pattern of which would be to provide incentives to encourage Canadians to invest in Canadian business operations and take the risks attendant.

Dr. Sinclair: But there is nothing in the proposed bill, or in the two documents issued at the same time the bill was introduced in Parliament, which would indicate anything specific in relation to helping the Canadian owned company.

The Chairman: That is right.

Senator Molson: Do you feel the difference between a Canadian owned business and a Canadian controlled business is a vital element?

Dr. Sinclair: Absolutely. This is the main point.

Senator Molson: Would you expand on that a little?

Dr. Sinclair: It is a key concept in the industrial policies of our government that a foreign subsidiary in Canada is essentially the equal of a Canadian owned business. The Minister of Finance said essentially that in his budget speech, when he said the foreign subsidiaries suffer the same handicaps as Canadian controlled companies. It is basic for industrial policy that the foreign subsidiary is essentially the equal of Canadian owned companies. I say this is based on a myth.

I maintain that a foreign subsidiary in Canada cannot provide the same employment opportunities as a Canadian owned company. I could illustrate that with my own operations. I have a subsidiary in the United States, and I maintain that there is no way that operation is equivalent to a domestic operation in that country. First of all, I make the decision as to the financing; I decide whether or not to guarantee their bank loan. We do the research and development in Canada and provide them with their product designs. We provide them with their engineering knowledge. We severely restrict them as to their export market. If, out of their operations, it should be desirable to establish a subsidiary in another country, which happens frequently now, it is the head office that establishes the subsidiary and gets the benefit from it, not the other subsidiary. I say that a subsidiary in Canada cannot provide the same employment opportunities as a Canadian owned company.

Senator Molson: You are describing a foreign owned company, not a foreign controlled company, in your own case.

Dr. Sinclair: Yes.

Senator Molson: So you have another distinction there.

Dr. Sinclair: Yes.

Senator Molson: Your subsidiary is Canadian owned.

Dr. Sinclair: Right, and Canadian controlled.

Senator Molson: That is not necessarily the same as a Canadian controlled company in the United States.

Dr. Sinclair: The minister of Industry, Trade and Commerce indicated that his next bill would provide that the majority of directors of all federally incorporated companies must be Canadian, and the presumption is that this makes it Canadian controlled. I do not believe that. With my own company, as the president at the head office, I decide who is on the board of directors of the U.S. company. I do not care whether the U.S. Congress says they have all got to be Americans or not. If I were required to have all Americans on that board, I would still control the board, because I name the members. If I named a member who did not like my policies he would soon be replaced, at the next annual meeting. Having all Canadians on the board of directors of a foreign subsidiary in Canada does not in any way assure that it is Canadian controlled. The decision on the control rests with head office, and there is no legislation that can change it, that I can see.

Senator Connolly: It rests with the shareholders.

Dr. Sinclair: It rests ultimately with the shareholders.

Senator Cook: If you had not gone to the United States and formed your subsidiary and entered into business there, would some American company be doing what your subsidiary is now doing?

Dr. Sinclair: Yes, absolutely. That was the incentive to go there; that was the only way we could get the business. We deal a fair amount with state and municipal governments, and most of them have "Buy American" policies that are fairly stringent. We found we just could not supply the market from our Canadian plant. This is a pattern that is unfortunately developing around the world, and it is the incentive to install subsidiaries in other parts of the world.

Senator Laing: What encouraged you to go there with a subsidiary?

Dr. Sinclair: That very fact. That is the only way we could tap the market. We could not supply it from here.

Senator Laing: Do you get equal consideration with the wholly owned American companies down there?

Dr. Sinclair: In most respects, yes. There are certain sensitive areas where we have some difficulty.

Senator Laing: "Buy American" includes you?

Dr. Sinclair: It includes me when it is me in the U.S.

Senator Cook: Do you have to get any permits from any federal or state government to enter into business?

Dr. Sinclair: Not so far. We are contemplating getting into a business that would involve licensing of radio stations, and in that case we will face some real difficulty, because the company is foreign controlled. However, this is a special situation.

Senator Cook: That is because it is in the field of communications?

Dr. Sinclair: That is right.

Senator Walker: What part of your content that you market in the United States is Canadian made?

Dr. Sinclair: Very little.

Senator Walker: Yet with your subsidiary company there, an American incorporation, you are treated well?

Dr. Sinclair: Yes; no complaints.

The Chairman: I understood the witness to say that his research and technology comes from Canada.

Dr. Sinclair: That is correct.

Senator Connolly: Would it be unfair to say that if the demand for your product in the American market was great, you would normally perhaps increase the labour content of your output? I am not talking now about technological improvement, and that sort of thing. If the demand for the product fell off, then the employment you give would naturally fall off too; in other words, the market would control that to a very large extent. Is it fair to say that you are talking now about another area where, as a foreigner owning an American Company, you perhaps will not have the incentives to try to realize higher standards of employment, because you are a foreigner in that country?

Dr. Sinclair: I am not sure I fully understand what you are getting at.

Senator Connolly: Suppose, for the sake of argument, there was a large unemployment problem in the United States and you were asked, like all other companies, to do what you could to improve the job availability. If the market did not really demand, the product, perhaps you would not be too enthusiastic about that, simply because you were a foreigner, whereas in Canada you might try to do a little more because it was your own country. Is that the main difference between these two situations?

Dr. Sinclair: I do not think so, sir. You are aware of the concept of a good corporate citizen. I try to operate my company so that each unit of it is a good corporate citizen of the country in which it is located. Obviously, there are situations where there will be a conflict of interest, and I just have to resolve these in the best way I can.

The Chairman: Now, Dr. Sinclair, can we get down to the business of what is wrong with the bill?

Dr. Sinclair: First of all, there are five factors listed that are to be taken into account in assessing a proposed assessment. I maintain that we do not have the information available to us on which to base a realistic assessment. What is lacking is an industrial policy. What we need is a plan that says that within five years, let us say, we will move from our present something-like 40 per cent of Canadian ownership of our industry to some higher percentage of ownership, whatever might be a realistic amount. If we had such a plan, you would then be able to judge a foreign investment. You would ask the question, "Does it add to our increasing Canadian ownership, or will it hinder it?" Then your decision will be fairly simple. There will still be difficulties, but it will be a lot simpler.

The Chairman: Right on that point, Dr. Sinclair, and looking at the factors enumerated in clause 2(2) of the bill,

if you look at paragraph (a), isn't that pretty clear language, as to the objectives?

Dr. Sinclair: Yes.

The Chairman: Weighing the value of the enterprise.

Dr. Sinclair: On the surface it appears so, but in actual fact, no. It is a "motherhood" type of statement, as far as I am concerned, because it says, for example, the effect on employment. I maintain that we have not the foggiest idea of what is the impact of a foreign subsidiary on employment. I can illustrate that with my own company, if you like.

The Chairman: You are questioning the capacity of the ability or the educational knowledge of those who will be administering?

Dr. Sinclair: No, I am stating that the basic economic facts are not available.

The Chairman: Do not get worried over criticizing the administration, because it has been done before here.

Senator Walker: That is one of the reasons you are here.

Dr. Sinclair: I am well known for being critical of the administration.

The Chairman: We had one man here, as the committee recalls, who said he had been in the civil service in the United Kingdom, and in India and in Canada; and he would not trust the judgment of any one of them as having the capacity to deal with the administration of this problem.

Dr. Sinclair: I had better not put it on the basis of capacity. I think that our civil servants, by and large, are a dedicated group, trying to do their best; but I am saying that they do not have access to the facts needed to make the proper decisions.

For instance, my subsidiary in the United States does about the same dollar volume of business as our Canadian operation at the moment, and they have half the number of employees: they have 40, and we have 80 in Canada. The difference is due to a number of factors, but one of the very important ones is the fact that the head office of the company is here. We have the export division at head office, we have our international operations division, we have our research and development division, and so on; and these increase the employment of the company in relationship to the subsidiary. When we have foreign subsidiaries in Canada, a lot of these factors are missing, so they are not complete companies.

Senator Molson: Is it not a sensitive figure? What is your global dollar figure?

Dr. Sinclair: It is about \$2½ million. We are a smallish company.

Senator Molson: In total?

Dr. Sinclair: Yes.

Senator Molson: And that is split?

Dr. Sinclair: Yes. My company is an innovative company that has a product for which we are ahead of the market.

The product is now developing, and our company is ready to grow very rapidly.

Senator Laing: May we develop this idea of yours about subsidiaries? I have an idea that Canada entered the last war as a very efficient and high-class agrarian nation, and when the war was over we started to get industry in here. I think that substantially we got it on the basis of bringing branch plants from the United States. That was the policy of Mr. Howe, who said, "We have got to have labour in Canada. You put a branch plant up here, and I will see you are protected to 20 per cent. I think that translated Canada from an agrarian nation into an industrial nation of considerable size. Protectionism and tariffs today have not the same import as they once had, and I do not think they ever will again. That puts us in a sort of different position. On your criticism of branch plants, I think your industrialization of Canada was built on the branch plants from the United States.

Dr. Sinclair: I fully agree.

Senator Laing: They came in on a deal and were protected on a deal—"You put your plant up here, and I will protect you."

Dr. Sinclair: Yes, I fully agree with what you say. My viewpoint is in a different focus. I am not against subsidiaries in Canada. After all, I have my own subsidiary in the United States, so I can hardly be against subsidiaries as a basic policy. My basic point is this, that our problem in Canada is not a foreign ownership problem; it is a Canadian ownership problem. We are not doing enough to help Canadian industry to grow to the point where we can achieve control of our own industrial destiny; and we will never solve the unemployment problem until we have substantially greater Canadian ownership of our industry. This is the basic point. I am not against foreign investment.

Senator Cook: You would agree with the approach of Minister of Finance Gordon, who made it possible for people to get 25 per cent interest in outside companies, by a tax benefit?

Dr. Sinclair: It is one approach to it, but I think it is totally inadequate. We need an overall industrial policy that recognizes the importance of Canadian ownership of industry. The Minister of Industry, Trade and Commerce said he rejects narrow nationalism. Mr. Turner said he rejects extreme nationalism. We are not going to solve this Canadian ownership problem if we reject nationalism.

Senator Cook: Everyone is dealing in great generalities. What is the specific problem here? What is wrong with this bill at the moment?

Dr. Sinclair: It is based on myth and fallacy; that is the basic point.

Senator Walker: On what?

Dr. Sinclair: Myth and fallacy.

Senator Walker: Now, be a little more specific. These are wonderful words, but they do not mean anything.

Dr. Sinclair: I have already indicated that it is widely believed that a foreign subsidiary is essentially the equivalent of a Canadian owned company in Canada, and

I say this is not true, that it is based on economic guesswork, it is not based on fact; and I can easily produce some facts, if you wish me to amplify that.

Senator Connolly: The facts you have produced so far, if I may interrupt you, doctor, are that research and development are done mainly at the plant of the American parent, and that gives more employment there. That unquestionably is a fact in many cases, because we know the R & D is done in the United States more than it is done in Canada, by American owned companies here.

Dr. Sinclair: Yes.

Senator Connolly: Are there other areas?

Dr. Sinclair: Other than R & D?

Senator Connolly: Yes, where higher employment is developed in the United States and not in Canada.

Dr. Sinclair: Yes.

Senator Connolly: Are these American owned companies?

Dr. Sinclair: Absolutely. Predictions are that by 1980 or 1990—I have forgotten—one half of the world's gross national product will be in the hands of the multinational companies. And Canada is doing everything possible to get rid of its multinational companies. We are just throwing away our international market. It should be recognized that the foreign subsidiaries in Canada export mainly to other divisions of the same company. This is the nature of the market that is developing internationally. In my own company, most of its exports go to other divisions of our company. So, if we want to have any control over our international market of the future, we have got to have strong, Canadian-based multinational companies; and all we are doing at the moment is driving them out of the country. This foreign takeover section will do very little to help Canadian companies to develop.

Senator Connolly: What do you say is driving them out of the country?

Dr. Sinclair: Various things. The government's tax policies, its purchasing policies, and this takeover section of the bill, are certainly not designed to help the Canadian entrepreneur.

Senator Gélinas: Can you mention some of the companies that are being driven out?

Dr. Sinclair: I do not have full facts, but I understand that Distillers Seagram, the Moore Corporation, Massey-Ferguson, either have moved or are moving their head offices out of Canada. I believe there have been one or two mining operations also that have moved out.

Senator Gélinas: In regard to the first corporation you mentioned, that is not correct.

Dr. Sinclair: It is not, you say?

Senator Gélinas: It is not.

Dr. Sinclair: Thank you. I am sorry.

Senator Connolly: Where is the head office of the Moore Corporation now, is it in Toronto?

Dr. Sinclair: I am sorry, I don't know.

Senator Walker: Yes, it is in Toronto. What do you know about it? Is this just a rumour you have heard? I have not heard this. As to Distillers Seagram, I have not heard that. What was the third one?

Dr. Sinclair: Massey-Fergusson.

Senator Walker: That might be an interesting problem.

Dr. Sinclair: I got my information out of a talk that was given by the president of Bell Canada recently.

Senator Walker: He is a disgruntled person too, isn't he?

The Chairman: We will move along.

Dr. Sinclair: If you want to look at the rest of this—

The Chairman: I was only illustrating a point. I thought the factor in (a) of clause 2(2) was pretty clear and specific.

Dr. Sinclair: May I comment on clause 2.2(c):

the effect of the acquisition or establishment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada;

I say that we do not have the facts on which to base this statement. If you read the Gray report, they make a strong point that Canada needs to import technology and that imported technology is a great bargain for Canada. I say that that is based on economic guesswork; it is not based on fact. There is no more expensive way to acquire knowledge than to import it, and it is not a great bargain when you do import it.

Senator Connolly: Dr. Sinclair, would you not agree that so far as subclause (2)(c) is concerned the effect of the acquisition on productivity and technology, and so on, is a fact which has to be judged at the time an application is made, and it may very well be that in a particular case the technology and the efficiency and the new product, and that kind of thing, could be generated, and perhaps even would be generated, within Canada in the proposal? Surely this is an opportunity to point out the very kind of thing you are advocating here.

Dr. Sinclair: My point is, sir, that we do not have the information required to make a sensible assessment of that.

Senator Connolly: Would you not get it as a result of the application of that test, which is one of the five?

Dr. Sinclair: That is a good test, if we had the facts, but we do not have the facts.

Senator Connolly: Would you not get the facts when you got the application?

Dr. Sinclair: No. Let me illustrate with my own company, which perhaps will be useful because it will illustrate a number of points. The way in which my company got started as an innovative company was that a number of years ago the Canadian Navy decided that it needed what was called a multi-coupler. This is a device which allows you to put several transmitters and receivers on a common aerial on a ship.

Now, at that time they could have gone to the United States and either imported the equipment, which was an elementary type of unit that was available, or they could have imported the blueprints and have had it made in Canada. In other words, they could have imported technology. The know-how did not exist in Canada. It was a brand new technology, if you like. But the navy decided instead to opt for a Canadian design and they funded my company in developing a Canadian design.

The result of that was the following: First of all, the Canadian Navy today has the most sophisticated multi-coupler of any country in the world, and it paid a fair sum of money for it. Secondly, my company is innovative because of the engineering resources which developed out of it. We could never otherwise have afforded the research and development division we now have as a result of it. Thirdly, innovation resulted in a commercial sense. My company now is the world leader in multi-coupling, and we have already generated enough taxes for the federal government that we have repaid the government every cent that it has given us for development and for procurement.

The Chairman: Dr. Sinclair, it seems to me that you are jumping both ways. First, you tell us your own experience, where you were able to develop a technology which produced an article or product which had an instant demand and a place to dispose of it; and then you tell us that we do not have the educational knowledge available in Canada to understand and administer properly subparagraph (c) in subclause (2). Which way are we going?

Dr. Sinclair: Let me put it this way: I say that the engineering capability exists in Canada to develop almost anything we need. We do not have to import engineering know-how. But the knowledge which our economists and industrial policy-makers have of this process is antiquated and totally unrealistic.

The statements in the Gray report on technology are basically fallacious. They did not bother to check them out with the people who might know something about it—namely, the engineering community.

Senator Connolly: Apart from the Gray report, are you telling us that the people who have the capability to develop new technology failed to communicate with the people who want to apply it? Is it a matter of selling?

Dr. Sinclair: No. It is a matter of entrepreneurship. I could go into the Engineering faculty of any university in Canada and find two or three ideas which would make innovative industries, but these innovative industries will not appear because we lack the entrepreneurs, and we lack them because the rewards and incentives are not there.

Senator Connolly: You say that capital is lacking.

Senator Molson: It is more than that.

Dr. Sinclair: No, there is plenty of venture capital in Canada. The investor is just too good a businessman to put it in a Canadian venture, because profitability is too poor.

Senator Connolly: That comes to the same thing.

The Chairman: Dr. Sinclair, we have dealt with one point of objection you have to the bill. What are the other points?

Dr. Sinclair: Let us deal with the takeover regulations. This part of the bill is totally inadequate, because, first of all, the authors of the Gray report did not ask the question, "What would be the impact of that on the Canadian entrepreneur?"

The Chairman: Just wait a minute, Dr. Sinclair. The question is not what the Gray report did or did not do. The question now is the areas in which this bill is deficient. You have said that the takeover part of the bill is deficient. Why, and in what respect?

Dr. Sinclair: Because there is a better solution to the problem.

The Chairman: What is it?

Dr. Sinclair: Namely, to create an environment in which it is profitable and desirable for Canadian companies to remain in Canadian hands. This is what is needed.

The Chairman: The takeover provisions contemplate takeovers by non-eligible persons which might relate to a takeover as between two non-eligible persons. Is that not right?

Dr. Sinclair: Yes.

The Chairman: Or it might represent a takeover of a Canadian business by a non-eligible person.

Dr. Sinclair: Right.

The Chairman: Which aspect are you dealing with?

Dr. Sinclair: The takeover of a Canadian operation by a non-eligible person. I think that what we need in Canada is an economic environment which will encourage Canadian companies to remain Canadian.

The Chairman: All right.

Dr. Sinclair: If this bill is passed, I think as a responsible official to my shareholders I would seriously have to consider the possibility of moving the head office of our company out of Canada to escape the takeover part of the bill.

The Chairman: That is, if you could, as a Canadian company, move your head office out of Canada.

Dr. Sinclair: I don't think I could be stopped.

The Chairman: You don't, eh? Well, I am not attempting to give you any advice, but you had better have a look at it.

Dr. Sinclair: Yes. Well, the point is that, as my company grows, the bulk of its assets will be outside of Canada; and for the Canadian government to tell me that I cannot sell those assets to a foreigner is, I think, unfair. It is quite okay for them to tell me I cannot sell my Canadian assets. That is fine.

Senator Cook: Why? Why is it okay for them to tell you that?

Dr. Sinclair: Well, I object to their doing it, but if the government feels that it is in the best interests to prevent

the sale of a Canadian asset, well, that is fine. I disagree with the reasoning behind it, but if the government says that is the way it is, to be, well, we will have to abide by it.

The Chairman: What is the next aspect of the bill with which you disagree?

Dr. Sinclair: I have made the main points, Mr. Chairman. I feel that the bill is inadequate in that we do not have an industrial policy to provide the guidelines for a proper assessment. This is the basic point: We do not have the guidelines and the economic facts.

Senator Laing: You were talking about being positive rather than being negative; being co-operative here instead of punitive elsewhere. Is that correct?

Dr. Sinclair: That is right. Our industrial policies are mainly negative.

Senator Laing: That is probably the result of the nature of our country. You know, there are several provinces in Canada in which the inhabitants would be in favour of free trade tomorrow morning. It is a difficult country in that sense.

Dr. Sinclair: Let me speak on protectionism. I think somebody mentioned that. I should like to propose the following intellectual exercise. Let us suppose that one day we decided we would stop all our trade with one of our trading partners. Take Japan as an example. What would be the impact on our economy? I believe that if we were to stop all our trade with Japan, we would be better off, and the reason is this, that our exports to Japan are 90 per cent, or more, raw materials with low labour content, while more than 90 per cent of our imports are manufactured goods with high labour content. Therefore, we are subsidizing these imports by paying unemployment benefits to our unemployed.

The Chairman: Then, Dr. Sinclair, if I might paraphrase what you have said, it is this, that we should be carrying on the processing and manufacturing operations from the stage of raw material to a stage that would involve a greater degree of development in Canada. Now you say that Canada needs that, but do you say also that only if the Canadians do it it is a good thing, and that if foreign money comes in and does it, it is a bad thing?

Dr. Sinclair: No, I am talking specifically at this point on imports. Somebody mentioned protectionism, but I say that that is a wrong characterization. In my opinion, enlightened nationalism is what we need.

Senator Laing: I cannot let you get away with this Japan business. In five months we have just finished selling them \$581 million worth of goods and that represents a billion and a half a year.

Dr. Sinclair: Is this manufactured goods you are talking about or raw materials?

Senator Laing: It is everything; but an increasing percentage of it is food.

Dr. Sinclair: What I would like to see in an assessment of the actual effect on our economy based on its effect on employment. In the electronics industry we employ ten times the number of people employed in the oil industry for the same dollar export value.

Senator Laing: But, Dr. Sinclair, the people of this country have to live by the means whereby they can live, and the western provinces today are resource provinces with fantastic resources. These resources are as yet hardly touched. As the requirements are increased in the demand countries we will be able, I think, to dictate further manufacturing process. This is the history of every resource-rich nation. But you are talking about a section of the country that is interested in manufacturing, as against the rest of the country dependent on resources.

Dr. Sinclair: May I remind you, sir, that there is high unemployment in certain parts of Canada, and the resource industries are not capable of absorbing that number of unemployed.

Senator Laing: That is very questionable.

Dr. Sinclair: We need more manufacturing industries throughout Canada.

Senator Laing: Mining is getting a bad name because a man is on a \$150,000 truck—one man—but behind that there are probably a thousand people contributing to the maintenance of that operation.

Dr. Sinclair: Well, I just wish we had the economic facts on these things so we would know what we were talking about. I maintain that at this stage we do not have them.

The Chairman: Are there any further questions?

Have you anything further to say, Dr. Sinclair?

Dr. Sinclair: I think that is all I have to say, and I thank you for your attention.

The Chairman: Thank you very much.

Now, honourable senators, we have a delegation from the Investment Dealers Association of Canada, so I shall ask Mr. Kniewasser to come forward and introduce the delegation.

Mr. Andrew G. Kniewasser, President, Investment Dealers Association of Canada: Thank you, Mr. Chairman. Would you like me to say a few words in French, to start off with, just for old times sake?

The Chairman: If you wish.

M. Kniewasser: Monsieur le président, l'Association des courtiers en valeurs immobilières du Canada est enchantée de cette invitation de comparaître aujourd'hui devant vous relativement au projet de la loi C-132.

Les délégués de notre Association sont M. Allan Crosbie de la Compagnie Wood Gundy Limited, M. Burns, M. A. E. Ames, M. Richard Meech, aviseur légal de l'Association, et son adjoint M. Wright, également conseiller juridique.

J'espère, monsieur le président, que les membres du comité ont en main le mémoire que nous avons soumis et qu'ils ont eu l'occasion de l'étudier.

J'aimerais vous en faire d'abord un résumé, et je serai ensuite à votre disposition pour répondre à vos questions.

We, as an association and as an industry, Mr. Chairman, have spent a good deal of time over the past year examining this proposed piece of legislation—as, indeed, we examined the previous bill, C-201, the Foreign Takeover Review Act. We have also had a number of meetings with

the minister and his officials, and throughout that process which started in June last year, we have been trying to be helpful as an industry in making constructive suggestions and in trying to make the proposed legislation more workable.

Indeed, in this new bill, C-132, there are provisions in respect to the securities industry and in respect of the way that the bill would relate to debenture capital business, in respect to the making of secured loans and the enforcing of security in the purchase of secured loans in the secondary market—amendments which were brought forward and which are in the new bill and which, indeed, we support.

In respect to the piece of legislation in front of your committee, the position of the Investment Dealers Association is, very briefly, that we support the objectives of the bill, and we believe that a review process is the most flexible and most practical means of ensuring that the economic benefits of foreign investment are maximized.

Secondly, we believe that there are still areas in Bill C-132, as presently drafted, which would have a detrimental effect on the operation of the Canadian capital market, and hence the pace of Canadian ownership and growth, and we believe that these detrimental effects arise from uncertainties created by the bill.

Let me add, Mr. Chairman, that we quite understand that some degree of uncertainty must be associated in any screening process; but we have attempted to point out in our brief that we think the screening process can go forward, that the degree of uncertainty as presently envisaged can be reduced, and we have made those specific suggestions that you see in the document.

The Chairman: Your case seems to be along the line of that presented in the brief from the Province of Ontario. Did you read it?

Mr. Kniewasser: There has not been any collusion with the government of Ontario, and I have not seen their brief.

The Chairman: I was not suggesting that. All I am saying is that we heard them yesterday, and they supported the objectives of the bill. Then they went on to point out that there were many areas which required change or additions in order to clarify, and many areas required change in order to establish clearly the authority of the provinces in the way in which they had a right to be considered.

In saying what I have been saying, I do not intend to indicate what we think about the bill ourselves. We simply want to get your views. But in the areas of uncertainty, could I put a general question to you? Do you think these areas of uncertainty can be cured by guidelines or interpretation bulletins, or is the only effective method by amendment to the bill?

Mr. Kniewasser: I would like to make two points in reply, but first of all I will deal with the general question. I would like to complete my short statement—I have two more paragraphs—then take on detailed questions.

With respect to the specific question, you will see from our brief that we consider that we should proceed both ways; that is, by making some amendments to the legislation, and also by carrying out a good job of making sure

the guidelines and the criteria for the administration of the act are practical.

Just to complete my statement: As we say on page 5 of our brief, the most significant omission in the bill, in our view, is the lack of provision for a form of summary procedure for determining whether a transaction is in fact an acquisition of control. We then set out seven specific examples of problem areas, with suggestions for improvement, and concluded with our comment with respect to the need to establish binding procedures for determination of the status of non-eligible persons.

Our comments in respect of beneficial ownership open up a difficult area, and we would be pleased to discuss it with you. It is a very sensitive and difficult area.

Finally, there is a reference to takeover bids and the prospect of conflict with provincial securities legislation.

We reiterate in our brief, Mr. Chairman, our desire to continue to work with this committee and the minister and his associates in the development of the guidelines and procedures.

In conclusion, let me say, please, that the proposed legislation, with appropriate modifications, can indeed have a constructive effect, in our view, on the extent and quality of foreign ownership and, hence, Canadian ownership in our economy. I would like to emphasize, however, to the committee that strengthening of the Canadian capital market is also at least as worthy an objective. It is large and growing, and savings by individuals and corporations in this country are now at record levels. Savings generated in Canada are now in excess of \$23 billion annually and should exceed \$40 billion annually by the end of this decade. With resources of this magnitude, Canadians can achieve in the market place very considerable progress in terms of ownership and economic growth.

The association suggests in its brief to you that we seek the greatest possible consistency in this bill under consideration with the continued development of an expanding, flexible and more innovative Canadian capital market.

The Chairman: Are you ready for questions?

Mr. Kniewasser: Yes, Mr. Chairman.

The Chairman: Perhaps you would care to deal with the question I put to you. In which areas do you believe amendments are necessary and that guidelines would be insufficient?

Mr. Kniewasser: We will take you through the seven specific areas, if you wish us to do so.

Mr. R. C. Meech, Q.C., Counsel to The Investment Dealers Association of Canada: Gentlemen, the key area in which we feel that amendment is necessary is the need of a summary procedure to determine whether or not an acquisition of control will actually take place. As you know, there is such a procedure in the bill to determine whether or not a person has the status of a non-eligible person. We are pleased with the procedure provided in that area, except that we are concerned that any ruling given by the minister is not binding in law. If it is not binding in law, then the person who applies for the ruling really does not know whether transactions into which he is about to enter might be rendered nugatory by the court.

Senator Connolly: Are you referring to clause 4 of the bill?

Mr. Meech: Yes, sir, that is right. However, in the area of acquisition of control there is no procedure permitting a summary tribunal to determine whether or not a proposed acquisition is an acquisition of control under the act. We feel that this will result in uncertainty in certain specific areas.

If you will refer to the brief, gentlemen, the first example is at page 6. That is the situation wherein there is a presumption of acquisition of control as soon as 5 per cent or more of the voting rights attaching to the shares are owned by one person. Because this can happen very easily at any time, a Canadian or a foreign company which is about to enter a transaction will need to know whether or not the acquisition of control is as defined in the act. The minister has indicated that this type of question should be asked on the basis of share determination. The shareholders' registration would be inspected and consideration given to where the stock has gone, and the party themselves would determine whether or not they would make an acquisition of control.

The Chairman: Mr. Meech, could I interpret you to say that if the 5 per cent were changed to 10 per cent, as the Province of Ontario has suggested, it would lessen the impact of the problem?

Mr. Meech: It would lessen it, yes.

The Chairman: Would you be in favour of that change?

Mr. Meech: Yes, we would, but the problem would remain.

The Chairman: But it would lessen?

Mr. Meech: Yes, it would.

Senator Connolly: I understand that the amendment to ten per cent would also bring it into line with some of the requirements of the Ontario securities legislation.

Mr. Meech: That is right, sir.

Mr. Kniewasser: And, indeed, the five per cent and ten per cent figures, Senator Connolly, are also enshrined in the federal legislation.

Senator Cook: In the Income Tax Act. This also meets the U.S. legislation.

Mr. Meech: It has a similarity, sir.

Senator Connolly: Do you know why the figure of five per cent was picked?

Mr. Meech: No, not really. The first bill provided for a 25 per cent test, increased from five per cent. Having done that, it was decreased to provide that five per cent of stock owned by any one person would imply a non-eligible person. It is that second one, throwing in that extra five per cent, which in my opinion we all agree has caused much difficulty. If it were ten per cent, the problem would be distinctly less.

Senator Connolly: But the problem remains?

Mr. Meech: Yes. It sounds silly to ask the questions we do in our brief: Can control be acquired more than once?

Quite obviously and logically the act assumes that control is acquired only once and a non-eligible person must first go through the review process for approval. However, we foresee—because of the way we read the act and we might say that our view is shared by many lawyers—the situation that once control is acquired and the person has gone through the review process—we could take the example of a person wishing to acquire 35 per cent of a company, going through the review process, and the minister determines that the transaction will be of significant benefit to Canada and permits the acquisition—then later on the same company wishes to consolidate its holdings and acquire another 25 per cent. You would normally think that would not have to go through the review process. But because of two clauses in this bill, one of which says you must look at all acquisitions as a part of a series, it does not matter whether you own some before the coming into force of this act or afterwards; you look at them all together.

Senator Connolly: Would you identify that clause now?

Mr. Meech: It is clause 3(8), page 13 of the bill. This is the one that puts together all acquisitions and says that you look at them as a group.

When you take that clause and the example that I gave you, and you look at another clause of the bill, which is clause 3(3)(d), that provides for a deemed acquisition of control if you have once acquired 50 per cent, and it is not rebuttable; there is no way you can establish to the contrary.

In our example, the man who went through the review process once, acquired another 25 per cent of the stock, then is faced with the fact of proposed section 3(3)(d) and is deemed to have acquired control, he looks at clause 3(8). He sees that all of his transactions must be lumped together, and in our view we believe that as lawyers we would have to advise that client that he would have to go through the review process again before he acquired another 25 per cent of the stock.

Senator Gélinas: If one wishes to consolidate his holdings from 25 to 35 per cent, what are the mechanics? Would you have to appear before the review board before making that move?

Mr. Meech: The thinking behind the bill is that if you have once gone through the review process, you do not have to do it again. We do not think the bill says that. We think the other result will obtain. Let us take the example of a fellow who owns 25 per cent at the time the bill comes in. He already has 25 per cent. If he goes to acquire another 25 per cent, clause 3(8) says you look at the 25 he had before and the 25 he is about to get, and he has to go through the review process. In fact, subclause (8) could have that effect on a smaller percentage of stock than 25 per cent. There is a rebuttable acquisition of control if another 25 per cent is bought.

Senator Gélinas: In other words, he has again appeared before the review board?

Mr. Meech: Yes, we think that is the effect of the bill.

The Chairman: He is not likely to lose what he has. If the additional amount sought to be acquired is another 26 per cent, they might review it from the aspect of the effect of control. Are you suggesting that whatever a so-called non-

eligible person might have in the way of investment at the time the act comes into force, they should not be looked at?

Mr. Meech: I am not suggesting that. I would like to bring the conversation back to the key point we are trying to make. In this area we are mentioning one or two examples where there could be uncertainty. The minister has indicated one view. We believe that technically another view can be taken. Therefore what we are really suggesting here is that there should be a procedure whereby, suppose a person is uncertain who owns 25 per cent of the stock right now. The bill says that if you acquire 5 per cent of the stock, unless the contrary is established, you are acquiring control; yet he already has 25 per cent.

We believe that a summary procedure is available. They simply go up and speak to the people invoked and say, "Under the circumstances, do you think this is an acquisition of control?" Hopefully the tribunal would say, "No, it is not. You already control the company. There is no point in your going through the review process."

That is what we believe is lacking. That is what we believe is the most serious omission in the bill. It could result in a number of technical problems. It runs to quite a few things.

Let us take a rights issue. There are varying views as to how this affects the rights issue. I think it is commonly held in the investment world, the way the act is written, that if you have a situation where a rights issue is made on a normal aliquot basis, where everybody's share ownership remains the same after the rights issue is over, the draftsman of the act took the view that if nothing has changed after the rights issue has been completed and you have exercised your rights, obviously the act has no application.

But if you read the bill, we believe that either there has to be a clear exemption in the act for a rights issue of that type; or, failing that, the summary procedure should be in there. It could clear up a lot of these problems. We could say, "Look, we are going to make a rights issue. We would like to make sure there is no possible chance that one of our shareholders, who presently owns 10 per cent of the stock"—and the rights issue is on a two-for-one basis—whatever the example might be, you could have a rights issue which results, on the exercise of the rights, although the overall percentage at the end of the road is the same in a situation where he actually acquires 5 per cent of the stock by exercising his rights. The bill will catch that.

The bill goes further, in our view, and says that at the time you actually issue the rights—because the issue of the rights is deemed to be the same thing as the stock behind it—you have acquisition of control by a person who receives sufficient rights that if he exercises them, they get 5 per cent of the stock.

We are sure that the draftsman is not trying to catch that, because there is no reason to do so. But at the moment we believe it does. Either there should be an exemption, we suggest, or the summary procedure should be in there so that they can normally get rid of that.

The Chairman: Which one do you favour?

Mr. Meech: The exemption.

The Chairman: The exemption means that it is in the statute.

Mr. Meech: An exemption saying that the rights issue of the type I have been referring to is not within the confines of the act.

The Chairman: To give you the assurance that you want, it would appear to me that the only real assurance you would get is if you amended the act to provide for certain exemptions.

Mr. Meech: That is the best method. If you cannot get that, the procedure would at least help.

Senator Cook: The procedure would be no good if the fellow said "No," because the company would have to start giving further undertakings to do further things.

Mr. Meech: It really should be in the act to give the certainty that is necessary. It is a common form of financing today, and we would not want to see anything happen to that type of financing. A company really does not know where it is with this bill.

Senator Connolly: If we put it in the act, would we be legislating for a specific case, or, in our view, Mr. Meech, would we be legislating for a very common, general, kind of case?

Mr. Meech: I would have to answer both ways. It is a specific case. The rights issue is a certain type of thing.

Senator Connolly: I realize that.

Mr. Meech: It certainly has general application, because it is a very normal source of raising money in this country. There are related problems like the issuance of convertible securities. You get into the same kind of problems. Possibly, exemption would cover both of those kinds of things. It might even go further and get into the warrants area. That is a slightly different problem.

Senator Flynn: What you have in mind is that the acquisition does not change the situation of a corporation, in fact; that it should not be caught by the act.

Mr. Meech: That is right, sir. On that we have another example in our brief. We raised this question on the former bill. There was no exemption relating to amalgamations. The point that we had made was picked up in a different way, in the sense that there is now a specific section in the act which says that an amalgamation, in effect, is an acquisition of control by the amalgamated company. Our concern was, however, for the clients, of which there are quite a few, who every now and then simply want to rationalize their affairs; they want to do it for tax reasons, or for internal housekeeping reasons. They have four, five or six subsidiaries in this country, and they decide to put them together to make those corporations all divisions. When they do that, it may be quite impossible to prove any significant benefit to Canada, because actually nothing has changed. If they have to prove significant benefit to Canada, as the bill now requires, because it is an acquisition of control, as the bill now says, they will never be able to rationalize their business operations, because they will never be able to so prove. This is another area where we suggest, first of all, there should be an exemption for any reorganization or amalgamation of companies which is economically neu-

tral. To us, this makes a lot of sense. If there is not an exemption, then at least there should be some procedure available which would direct the company to do this after a very short period of time.

Senator Connolly: I should like to take a moment to deal with the question of the summary procedure. Really, I guess the kind of thing you argue for, which seems to me to make a lot of sense, is the opportunity for people in doubt, in cases such as those you describe, to get a fairly quick ruling on their status. Whether or not you call it a summary procedure, and whether there is a fee paid for it, as they pay in the Income Tax Department for a ruling, what you want is a binding ruling that allows you to go forward with assurance.

Mr. Meech: That is right, sir.

Mr. Kniewasser: There is a related point there. Mr. Meech has now said probably enough to leave the impression that we feel the agency is going to be unduly cluttered up with a lot of investigations, and time is consumed on looking into these questions of fact, when the real business of the bill is supposedly trying to assess "significant benefit to Canada".

The Chairman: The board of review is a clearing house.

Mr. Kniewasser: Yes, but I am referring to the process. I think the minister has referred to two or three hundred cases a year. Our feeling is that in view of the realities of the marketplace and the kinds of decisions required, there will be a lot more than two or three hundred cases a year. It will be an unduly heavy administrative burden.

The Chairman: Suppose we agree that there should be some way by which you can quickly resolve this question. Is the application for a ruling that is effective and binding, what you suggest, to be provided by statute?

Mr. Meech: Yes. We suggest something very similar to what the bill says to determine whether or not you have non-eligible status, with one change, which is that, in our belief, to make those rulings worthwhile they must be binding in law. The present review process or summary hearings will, the minister has stated, be binding in fact, and of course his decision can be appealed. We do not get much comfort out of a binding in fact ruling, because it certainly will not bind a court. To our knowledge, there is no statute that gives, within the Federal Courts Act, any appeal to courts from the minister's ruling. We strongly suggest that the present summary procedure in the bill as to non-eligible status provides for binding rulings, and that a similar procedure be provided to determine whether or not there is acquisition of control.

The Chairman: If there is a possibility of an appeal, the kind of ruling you would want would be a binding ruling which was effective for ever.

Mr. Meech: Yes, just like you get from the Department of National Revenue today, that type of ruling.

The Chairman: You pay for it there.

Mr. Meech: Yes, and I see no reason why they could not pay for it here, if that is necessary.

Senator Connolly: Don't jump too fast on that.

The Chairman: How would you relate what you are now discussing to this 90-day period which the minister has to make up his mind?

Mr. Meech: I think the minister has indicated in some of these areas that the existing review process, with its 90-day period, can be used to settle some of the uncertainties to which we are referring.

The Chairman: Ontario says the 90 days should be reduced to 45 days.

Senator Molson: At least.

Mr. Meech: We have not really zeroed in on the 90-day period as such. We assumed the government feel they need 90 days to settle these questions.

The Chairman: Why should it not be 30 days? Do you see any objection?

Mr. Meech: The only objection is the practical one of whether the gentlemen in the agency can get all the material they need to decide this corporate question of "significant benefit to Canada".

Senator Connolly: Do you know what the delay is when you apply for a ruling under the Income Tax Act?

Mr. Meech: I am not up to date on it at the moment. It usually takes a fair period of time. I would think you usually get it within a month.

Senator Connolly: Then you must have good influence, because my experience has been it is at least two months.

The Chairman: Our advisor, Mr. Poissant, tells me that the average on the income tax rulings would be 45 days.

Senator Connolly: I said two months, which is pretty close.

Mr. Meech: Perhaps 45 days is a closer example.

Senator Connolly: I have had some experience with them, and it has taken two months in some cases.

The Chairman: You could have had two months with one problem, but we are talking about the average.

Senator Connolly: Would you think the time period for what we talk about as a ruling, and what you talk about as a summary procedure, should be considerably less than the time period where the normal applications have to come in?

Mr. Meech: Yes, because they will be determining a very difficult question.

Senator Connolly: Are there any you envisage where you should have them within, say, a week or ten days?

Mr. Meech: Yes, and that is in the area of whether or not the particular transaction is an acquisition of control. We are not talking about whether, if it is, it will be "of significant benefit to Canada," which is a much broader problem. It is just under these facts, like the rights issues. Is it an acquisition of control? I would think that could be done in a week.

Mr. Kniewasser: What we are arguing is that we could reduce the delays and the amount of work involved and the uncertainties by exempting some things from that

process, by providing for quick rulings in other cases. In those cases in which there really is negotiation to determine "significant benefit to Canada," have the agency working on those cases. In that case 90 days does not disturb me, where there are bone fide cases, because it might take that long to reach an understanding with foreign investors in the country's interest.

Senator Gélinas: What is your reaction on this exemption of the rights issues and the conversion of convertible debentures or shares?

Mr. Meech: We think there should be such an exemption clearly in the bill.

Senator Gélinas: That is your recommendation?

Mr. Meech: Yes, sir, it is.

Senator Gélinas: Mr. Chairman, I should like to revert for a moment to acquiring control more than once. If someone decides to add to his present holdings, does he do it before he appears before the review board or does he do it afterwards?

Mr. Meech: As the bill stands, if a non-eligible person is going to acquire five per cent of the stock, that is deemed to be an acquisition of control unless the contrary is established.

Senator Gélinas: But if he is just adding to his present holdings, what you have here he is exempt, on the 25 to 60 per cent.

Mr. Meech: In our view, we think that he would have to go through the review process before he could acquire the stock, or else run the risk of having violated the statute, having bought it before he went through it.

Senator Gélinas: So, if he goes to the review board before he purchases the shares, how soon does the review board make public its decision?

The Chairman: They do not make the decision.

Senator Gélinas: I beg your pardon?

The Chairman: The government does not make the decision.

Senator Gélinas: But they give him authority to buy another 35 per cent.

The Chairman: The board of review is a clearing house; they gather material and turn it over to the minister. The minister makes a recommendation to the Governor in Council. This is why I think, when you so readily agreed to the 90-day period as being reasonable, there is inherent in the 90-day period a much longer period.

Mr. Meech: Yes, almost an indefinite period, sir.

The Chairman: This is what concerned some of the people who were before us, because the 90 days they thought was too long to make the determination of "significant benefit". But then, when you go beyond that and the minister wants more time, he just starts asking questions.

Mr. Meech: That is right, and then there is no time limit.

The Chairman: There is no time limit.

Mr. Meech: That is right, sir. We made that point earlier in our brief, that we thought that was too long a period of time in general; but we did not want to make too much of the 90 days, because we did not know how long it took to decide these questions.

The Chairman: There is one way of finding out the time limits. If the law requires it, the agency concerned will adapt itself to the situation. In the income tax administration, of course, sometimes they will overcome being shut out by time limits, by making a quick assessment. That would be bad here, if they said "No".

Mr. Meech: I think they would err on the conservative side.

Mr. Kniewasser: Mr. Chairman, I would hate to see something written into the bill that would prevent the government, any government, from conducting a pretty successful negotiation with a major foreign investor. You can easily see, from experience in the government, cases where those negotiations could not be completed in the best interests of the country in 45 or 30 days. I think there should be a provision for very careful negotiations, where appropriate. The way you avoid the problem is by trying to provide for summary procedures for things that can be dealt with quickly, in a summary fashion.

The Chairman: My question is really on the the 90 days. We have clarified your position on the summary procedure. I am only talking about the 90 days requirement, where the main question is to be settled, whether it is of significant benefit or not. The question is with the 90-day period which the government has to consider it, that it can get many indefinite extensions of the time. The question is whether that should be tightened up. We have had witnesses who said, "Yes, it should be tightened up."

Mr. Meech: To a smaller time?

The Chairman: Yes.

Mr. Meech: Limiting his ability to have a full consideration?

The Chairman: No.

Mr. Kniewasser: I do not think the association took a position on that.

The Chairman: A shorter time, with the period spelled out as to the additional time when they can demand additional information.

Mr. Meech: That would make good sense, the second part particularly.

Senator Cook: We are talking about the issue of convertible debentures, 5 per cent, and you say in your brief it is pursuant to the acquisition of control by the non-eligible person "unless the contrary is established." I would be interested to know how you are going to establish the contrary. Could you have an issue of convertible debentures, and then some merchant banker buys 5 per cent of them, which puts him in control, unless the contrary is established? How do you establish the contrary, bearing in mind that when he has bought those 5 per cent he sells them to another merchant banker? How are you going to establish the fact that he has not got control, bearing in mind the wording of the act?

Mr. Meech: As I understand the minister's view on this—

Senator Cook: Never mind the minister. It is the act I am talking about.

Mr. Meech: The act simply says, "establish the contrary." My understanding would be that you would try to do that by looking at the existing shareholdings of other groups, and if you saw that one group or person who was not an ineligible person already had 20 per cent, if you saw that the total amount of the votes related to the total amount of convertible debentures totalled, say, a maximum of 10 per cent of the company's voting power, then you would, in your own mind—in your own mind—self-determine that it was not an acquisition of control.

That is one of the basic reasons why we feel there should be this summary procedure. If you are not clear in your own mind that you can establish the contrary, then you either do not issue the convertible debentures, because you may have created an acquisition of control unwittingly, or else you sit there and decide, "Well, we will just pass up the convertible debentures rather than run the risk." If there is a summary procedure, you can go and say, "Will this, in your view, amount to an acquisition of control under the existing facts?" I would think they would very clearly say, "No, it won't," and they will give you a legally binding ruling to that effect, in which case the company carries on.

Senator Cook: A legally binding ruling to that effect—that somebody can buy 5 per cent—

Mr. Meech: No, that, "Your issues or issue of these convertible debentures, under the circumstances you have described to us, will not involve an acquisition of control by anybody and, therefore, go ahead and do it!" They can do that by looking at the existing shareholder register. You can see that even if all the debentures were converted, no real change of control would take place, even though someone may have bought 10 per cent.

Senator Cook: That would limit the amount of debentures you could issue to a very small extent, wouldn't it?

Mr. Meech: It could have an effect on the principal amount of the debentures. It depends on the existing shareholdings of the company planning the issue, as to how big a problem it would be.

Senator Cook: That could be all right for a large public company, but take a medium sized company that wants to do a fair amount of debt financing, and issues convertible debentures. Then you would be in the position that the conversion of the debentures into shares would surely take more than 5 per cent, if it is any sizeable amount?

Mr. Meech: Yes, it would, and the act goes further and says that the actual receipt by the debenture purchaser is the same thing as if he converted the stock. So the problem arises at the very time you issue the debentures.

Senator Cook: Your solution would only help a pretty large company, would it not?

Mr. Meech: Yes, it would. I do not think we have a solution to the question of a small company that could put out convertible debentures which would result in a non-eligible person acquiring, say, 15 per cent of the stock of

the company. I think that under those circumstances it clearly catches the stock unit.

Senator Cook: And this would have the effect of preventing small companies from becoming big companies?

Mr. Meech: It could have that effect.

Senator Molson: Do you have any preference as to that 5 per cent or 10 per cent?

Mr. Meech: I would think that in terms of helping the certainty, it is bound to assist us in the security business.

The Chairman: Clearly, it will assist in the administration.

Mr. Meech: Yes, it has got to. You would have fewer applications if it is 10 per cent.

The Chairman: Have you made a list of what you estimate should be included in the exemptions?

Mr. Meech: I think our brief refers to two or three specific exemptions that we would suggest. One is rights issues.

The Chairman: Another you talked about is the convertible debenture?

Mr. Meech: A third one is what I call the economically neutral amalgamation, where nothing is changing economically at all.

The Chairman: That is recognized for tax purposes.

Mr. Meech: Yes, it is—not for this bill. I think this is an important one, because the way that one works is that I think it would effectively stop companies making these rationalizations of their structures, because they just may not be able to prove economic benefit to Canada, because nothing has changed, so they just could not go ahead and do it.

The Chairman: Now you have moved right into another question that we are bound to get to at some stage; that is, your view as to the use of the expression “of significant benefit”. Frankly, in that connotation, I do not know what “significant” means, do you?

Mr. Meech: No, I do not, sir.

The Chairman: Why should we leave something in the bill if we do not know what it means?

Mr. Meech: We have not actually addressed ourselves to that.

Mr. Kniewasser: The association agrees with the objectives, as I said. We feel that the screening method is the only sensible method of going about it, and that involves risks and uncertainties. I do not know of any other way of proceeding, if that is the route we must go, than to set up economic goals and trust the minister to administer those. You cannot do it through a bill.

The Chairman: Suppose you strike out the word “significant” and the requirement is “benefit”, have you any comment on that?

Mr. Kniewasser: That does not do much for me, because it is a question of measuring “benefit”.

The Chairman: What do you have to say about the language, “against the national interest”?

Mr. Kniewasser: I do not think it is a question of just whether it is against the national interest; it is a question of measuring the degree of contribution to the national interest. So the word “significant” interests me—“relative-ly significant”.

Senator Flynn: To come back to your point, outside of the acquisition of rights, of shares by the issue of rights, would you go so far as to say that if a company at the time the act comes into force is controlled by non-eligible persons, subsequent transactions should not be subject to review; that once the control is established, it does not matter what happens afterwards?

Mr. Meech: You are talking, sir, about the shareholders?

Senator Flynn: Let us say 25 per cent of the company is owned by a non-eligible person. It is a foreign-controlled corporation under these provisions of the act. If the non-eligible group or other non-eligible persons acquire more shares, you said some time ago that it would not matter because control was already there. So I am just suggesting to you that you have said that once the control is established the subsequent transactions do not matter at all.

Mr. Meech: I think, logically, we would have to take the position that a company that is already controlled by 25 per cent non-eligible persons should not have to go through the review process.

Senator Flynn: It does not matter what the percentage of control is after that, whether it is 51, 68 or 90 per cent?

Mr. Meech: No, not once they have acquired control, as the act says it.

Mr. Kniewasser: Of course, under this proposed legislation, that foreign-controlled company would be subject to other provisions of the act if they decided to make investments or diversify or something else. We are not turning them loose.

Senator Flynn: Of course not. That is something else.

Mr. Kniewasser: It would be just more shares of the same company.

The Chairman: Mr. Meech, you cited cases where transactions like amalgamation would not really change the status of the enterprise and, therefore, it would be difficult to meet the test of “significant benefit”. That is an area we have been calling neutral. Should there be some provision to deal with what you could call a neutral area?

Mr. Meech: We certainly think so, in the example we are talking about. It is an economically neutral amalgamation. Possibly the exemption, if such it is, should go further and, using that as a basis, cover any transaction which is economically neutral. In other words, why burden the review process with things they are really not concerned with?

The Chairman: It certainly does suggest by implication that “significant benefit” is not perhaps the best way of reaching a determination, but no person has come up with any different suggestion, other than what they have in the Australian act.

Mr. Meech: The other alternative would be to switch it around and say that it is not going to cause harm.

The Chairman: That has been discussed here, that it will have no detrimental effect.

Mr. Meech: Yes, to switch the emphasis to the negative.

The Chairman: You are not proposing that?

Mr. Meech: Not at all.

Mr. Kniewasser: No.

Senator Molson: Mr. Chairman, if I may say so, I do not think Senator G  linas received an answer to his question which he put about 15 minutes ago. I think he asked, regarding a person acquiring an interest in a company which put him into the non-eligible category, for example, from 4 to 6 per cent or from 25 to 27 per cent, or something like that—if he had to apply before making the transaction. I did not hear an answer to that question.

Mr. Meech: It is my understanding, senator, that he would have to apply before he acquired the stock.

Senator Molson: In other words, 99 times out of 100 the deal would be impossible.

Mr. Kniewasser: That is true. That is what we are afraid of.

Senator Molson: It would be as secret as if it were broadcast, and there would be no element of a reasonable deal assured, because you would not know the conditions by the time the ruling came down.

Mr. Kniewasser: We have also dealt with this in respect of the procedure for takeovers, and the same comments would apply. As we point out in our brief, it would be quite impossible to achieve a desirable takeover unless the procedure could be shortened, because it is too long.

Senator Molson: It should be shorter and more confidential.

Mr. Kniewasser: Yes.

Mr. Meech: Speaking practically about takeover bids, we are concerned about how they fit into this legislation. Of course, we understand that the legislation is designed to affect takeover bids, but we are concerned as to how they will actually operate in practice.

Senator Molson: Yes, there would be some side effects.

Senator Connolly: Mr. Chairman, if I may put a kind of testing question to Mr. Meech, in connection with the second acquisition which Senator G  linas referred to, you say that you think that if an organization or a person has 25 per cent of the stock and has had his acquisition of that much approved, and then later wants to add to it, say, another 27 per cent, which puts him over the 50 per cent, he should not, in your opinion, have to re-apply. He should be considered to have been proved to have met the five demands in subclause (2) of clause 2 in the first instance, and, therefore, he should be relieved of reapplying for the second acquisition.

Mr. Meech: Yes.

Senator Connolly: I am not trying to trap you here, but I would like to get your comments. There is a little inconsistency there. If one of the purposes of the bill is to try to preserve in Canada as much ownership as possible, would the elimination of the second application not negate that purpose of the bill?

Mr. Meech: If the bill is related primarily to ownership as distinct from who controls, you are right, sir. If it is related to who is controlling our economy, then, I do not think it matters if he has gone through it once and proven significant benefit.

Senator Connolly: Doesn't one follow from the other? Is control not the effect of ownership? Are you not really talking about the same thing ultimately, whether you talk control or ownership?

Mr. Meech: I do not think so.

Senator Connolly: If the purpose of the bill is to increase Canadian ownership—and I stress the word “if”—and thereby Canadian control—and here I am perhaps being the devil's advocate—I think for that purpose there should be a second application, because not only are you going to get control but it is going to be an irrefutable control in that case, isn't it?

Mr. Meech: Yes, it is.

Senator Cook: First, there would be a presumption which might not be control, but when you get 51 per cent, it is not a presumption any more, it is actual control.

Mr. Kniewasser: I thought the purpose of the bill was to screen foreign investment and takeovers in the country and, in that way, try to get a better result from foreign participation in our country.

Senator Connolly: A better result of domestic participation, you mean.

Mr. Kniewasser: Yes, exactly. I tried to say in my own statement that the question of Canadian ownership is only part, in my view, of the larger question of improving Canadian ownership and Canadian performance here. The business of having to go back, having once cleared the review procedure, in order to get a takeover or new investment approval, strikes me as being an almost endless business and as being unduly obstructive of the normal business process. If somebody came into the country, and we agreed that he was doing something in Canada's interest, and if every time he wanted to do something he had to go back to the agency again—I really cannot conceive, if that is the prospect, of getting people to come on that basis.

The Chairman: But, Mr. Kniewasser, isn't there an intermediate course? Supposing you did not have to go back to get another approval so long as your acquisitions did not give you actual control of the operations of the company?

Mr. Kniewasser: You mean, sir, actually over 50 per cent?

The Chairman: Yes.

Senator Connolly: Below 50 per cent. He is talking about below 50 per cent.

Mr. Meech: You can have control with a lot less than 50 per cent. It is really effective control that we are concerned with here, rather than legal or actual control.

The Chairman: Well, effective control is almost as elusive as "significant benefit". Would you care to make any comment on that as being a meeting point?

Mr. Kniewasser: I think my comment would be this. Once we agreed that a specific project was in the national interest and that there was going to be a degree of foreign participation and foreign investment and that that was good for Canada, then I do not think we should make them repeat that every six months or every couple of years. I think, in response to Senator Flynn's question, that if they decided to go into another line of business or establish something else, then that would be another matter.

Senator Connolly: Let us suppose that the enterprise is found to be of significant benefit to Canada, and let us suppose it is going to add to technology and meet all these five conditions in clause 3(2). Now, if the further purpose of this bill is to increase Canadian ownership and Canadian control, then I put it to you again the way the chairman put it to you: Is there not some sense in requiring that a further application be made? I am not urging this, I am asking it, because I think that is one of the problems that we have here.

Mr. Kniewasser: I guess I don't particularly like the trade-off involving more running to a government agency for something that has already been approved in the first place. You offset that against what you might lose by this corporation's not trying to include Canadians in its operation. I think I would opt for the second course.

Senator Molson: There might be one other complication that I think I should bring up. In the case of an offer or a takeover or a merger that it was decided to extend, in this case, if you had to go back for an increased participation, you might have to ask for approval for leaving the offer open for a further period of so many days.

Mr. Meech: It could happen.

Senator Molson: There again, you could have a situation where you would be running back to the department repeatedly and perhaps, in some cases, seeking three extensions to some offer.

The Chairman: What you are saying, in effect, is that periods within which action must be taken by the government authority should be specific so that your offers would be related to those periods.

Senator Molson: Also I think it does support what the witnesses have been saying about going back. Once it is established that you have a significant benefit, then whether you have acquired 67 per cent and you leave the offer open for a further period to acquire great control—if you had to go back to the government again, it would really be an endless procedure.

The Chairman: You mean that in the first offer to acquire control you would put in options?

Senator Molson: The first offer would have been approved.

The Chairman: But in that first offer you would be buying a certain percentage of the stock.

Senator Molson: Well, let us say, the minimum of 51 per cent or whatever it might be.

The Chairman: But in that offer there would also be provided options, and could you not resolve the whole question then in one hearing?

Mr. Kniewasser: But, as I understand the bill, Mr. Chairman, that is one of the criteria. When the first negotiations take place, that is one of the questions you ask the foreigner—what does he propose to do to aid Canadian participation in the business. Presumably that is all said before you proceed the first time. So presumably people will proceed in that way. You get that undertaking before it is approved in the first place.

Senator Connolly: But that is not answering the chairman's question. I do not think the question has been answered.

The Chairman: Not yet. Maybe I shall have to try harder.

Mr. Meech: Try us again!

The Chairman: All I suggest is that where an offer must be presented to the review board and the minister for decision, and it covers an acquisition of 25 per cent, in that same offer, if provision is made for options for, say, another ten per cent at a certain time and yet another ten per cent at another time, and I present that one document to the board of review, why should I not be able to get a ruling at that moment instead of having to run back each time?

Mr. Meech: I think that in certain circumstances you would get a ruling that would cover the whole 30 to 45-day period.

Senator Walker: Mr. Meech, would you be good enough to speak to us so that we can hear you as well?

Mr. Meech: I am sorry. I do not see any problem there because I would think that you could get one ruling to cover this.

The Chairman: But it does not say so in the bill.

Mr. Meech: No, but that would not bother me too much, somehow or other, although technically I agree that it is still caught by the problem you raise.

The Chairman: You would agree that there would be more assurance if the bill so provided?

Mr. Meech: Yes. The problem would be greater, though, if you just went for your 25 per cent and that was all you wanted at that time. Then you approve it, and then two years later you decide to add another 10 per cent.

The Chairman: But you present this as a problem—having to go back to the board more than once. But what I am saying is that if you gather it all up in one document, then you get all your consideration at one time. It does not mean that you would of necessity have to go ahead with the rest of the provisions of the document, but you would have approval.

Mr. Meech: Are you suggesting, sir, that while you are going after 25 per cent, because you think that maybe

some day you might want to have 75 per cent, in your first application you say, "We want to cover it for 75 per cent"?"

The Chairman: No. I would say, "I want you to approve of a commitment for 25 per cent, and I want you to approve of options which, spread over a period of time, if I exercise them, would entitle me to another 50 per cent." What is the objection to making that part of the bill?

Mr. Meech: That would work fine, particularly on this question of acquiring control more than once.

Senator Connolly: That is what we are talking about.

Mr. Kniewasser: But where it does not work is where a businessman cannot predict today what his position will be in view of what is going to happen in the market in two or three years from now.

Senator Connolly: That is true, but this is only in the case where you have the options available at the time of the deal.

Mr. Kniewasser: But he would tend to set out, I think, the worst possible circumstances.

Senator Connolly: But, Mr. Meech, do you think that under the bill as it is written now the propositions that the chairman put to you could be dealt with by the review agency, namely, acquisition now of 25 per cent and options for a further 10 per cent on two occasions, let us say? Do you think that could be done under the bill?

Mr. Meech: I think it could. I have difficulty in seeing that type of application being made in the normal course. I think that companies normally go after a specific percentage, which is all they want, and they really are not thinking of these future acquisitions at that time.

The Chairman: Well obviously, Mr. Meech, you and your association have both thought of this business of recurring visits every time you want to acquire some more stock, and therefore I am sure that you would very quickly try to work out some basis for reducing the number of your visits to one.

Mr. Kniewasser: Yes, sir.

Mr. Meech: If it is possible we should, and we would.

The Chairman: This may be a method of doing it. I am only asking for your viewpoint and not making a legal decision.

Mr. Meech: No.

Senator Flynn: The problem would not arise, Mr. Chairman, if the bill were amended to provide that subsequent acquisitions after control had been established would not constitute acquisition which is subject to review.

Mr. Kniewasser: This is our recommendation.

Senator Flynn: We could, of course, provide for the summary procedure for quick determination that a certain transaction would not be considered to be an acquisition under the act. Then your problem would not arise. However, I am quite sure that if there were an option to buy 25 per cent now and 25 per cent next year, and application were made to the minister for approval of the whole option, he could decide the matter then.

The Chairman: Yes, but if the statute provided a right to do it, it would still be subject to the minister's decision.

Senator Flynn: If the minister approved in advance, it would be the same thing.

The Chairman: In any event, maybe we have shaken the life out of that one. However, we have stressed two points with others who have appeared before us. One is the question of providing two parts in the bill, the first dealing with takeovers in which would be included the factors and "significant benefit" provisions as being applicable to that part. The other part would include the matter of establishing new businesses and unrelated businesses. There the test would be different. Instead of "significant benefit," it would be "no detriment". Various views have been expressed, and we must pay tribute to Senator Molson as originally suggesting this.

Senator Molson: I will never live that one down.

The Chairman: If we get it into the bill it may become known as the Molson amendment. Have you any comment?

Mr. Meech: My comment, sir, is that it would be a definite improvement if that change were made. I could see it being more difficult to make that test in the first part of the bill because of the basic concern of foreign takeovers of new businesses. I would think, however, that it would make good sense to make that distinction.

The Chairman: The other point is that we have discussed with various witnesses the matter of an appeal when the minister indicates his viewpoint and his recommendation. He makes a recommendation which is not disclosed to the person who applies. The first time the applicant for approval knows what has been decided is when the Governor in Council says "Yes" or "No." The minister makes a recommendation to the Governor in Council, and we have considered the idea of providing that the minister must give reasons, whether they are published or just given to the parties concerned. To the extent that those reasons contain questions of fact or law, or mixed fact and law and misinterpretation of facts and lack of appreciation of the facts produced, that person would have a right of appeal to the Federal Court and, subsequently, to the court of appeal of the Federal Court. The problem which caused us some concern was having the court issue an order that the minister make such-and-such a recommendation. As a solution to that problem, it has been suggested that the Federal Court might write its decision in the same type of language as is used by the Privy Council in its judgments. If you recall, their decisions are not really described as judgments. The conclusion of the so-called judgment is "We humbly advise Your Majesty as follows . . ." They would only be giving advice to the minister which, if it were against his findings, I would doubt whether he would dare fly in its face. If we finally determine that would be workable and should be done, it would be a solution. Do you have any suggestions?

Mr. Meech: All lawyers like rights of appeal at all times, and I am certainly in favour of that. I see the difficulty, though, in the court directing the minister.

The Chairman: They would not be if they said "We humbly advise . . ."

Mr. Meech: Yes, I believe that would have possibilities because, presumably, the court would only suggest, if you want to put it that way, to the minister that after a careful re-evaluation of the facts before the minister and of the law, they really felt that the minister had misjudged this particular question. It does involve, I suppose, the court in determining questions of "economic benefit to Canada". That, as a lawyer, I find a little difficult.

The Chairman: But could it not be purely a question of fact?

Mr. Meech: It could be, yes, but it is a little outside the normal type of appeal.

The Chairman: Yes, but you know that in our courts judges can engage experts to sit beside them when considering questions of this nature.

Senator Walker: It does not work out very successfully many times. The courts of appeal often reverse because the expert butted in.

The Chairman: It is on the basis that the judge at the trial had the benefit of something they do not have; that is, the ability to assess the credibility and knowledge of the expert.

Senator Walker: The court of appeal often considers that to be a great intrusion on the judge's ability to conduct the trial.

The Chairman: It is in the law.

Senator Walker: It is in the law, but it does not work.

Mr. Kniewasser: As a businessman, I am sceptical of this as a practical proposition. I really cannot conceive of a substantial foreign firm, such as Mitsubishi, coming to Canada to invest here,—facing a situation in which the minister says it is not of significant benefit to Canada and trying to establish a basis to come in by a court saying the minister was wrong. In my opinion, this would not work.

The Chairman: You realize what you are saying, Mr. Kniewasser? You are making the minister change the recommendation. No matter how wrong or bad it may be found to be, it is the minister's decision.

Mr. Kniewasser: We could change the minister!

The Chairman: Yes, but that may take four or five years.

Senator Cook: There is one person everyone seems to be forgetting. What about the Canadian businessman who wishes to sell? He has some rights, does he not? If, through neglect of facts, the minister is wrongfully advised by his own officials and the court case goes on and on and he holds on, he pays succession duty and that is it.

Mr. Kniewasser: I do not think you have a foreign buyer in those circumstances, in practical terms.

Senator Cook: That is your opinion, and you may be right.

The Chairman: Would you agree with the right of appeal on rulings, with a summary procedure for obtaining rulings?

Mr. Meech: I have thought about that, and, again, I always feel there should be rights of appeal so long as they can be provided. However, there is no procedure whatsoever now applying in the area of acquisition of control. The only other type of procedure is something which is binding only in fact on the minister and not in law, and in my opinion it would be of great benefit to provide for a binding ruling of the minister without necessarily pressing to have that binding ruling of the minister also subject to appeal. It is always better to have a right of appeal. Speaking personally, I would be satisfied with a binding ruling of the minister in the area where we do not have a procedure.

The Chairman: You might be opening up a binding ruling if you are providing a right of appeal. You might have to give the right of appeal both ways.

Mr. Meech: I think you would have to have it both ways.

The Chairman: It might not be effective.

Senator Flynn: There is a technical problem involved in your appeal from the Order in Council. I think I mentioned it yesterday. The Order in Council does not have to be in accordance with the recommendation of the Minister. There is nothing in the act that says that the Cabinet can rubber stamp a recommendation of the minister. I think the right of appeal, if it were given, should be given on the recommendation and before the Order in Council is issued. The report should be given to the applicant, and there should be a delay for an appeal. There would then be a recommendation by the board or approval of the recommendation by the board. The Governor in Council could then make a decision at his discretion, even though not in accordance with the view of a court or with the views of the minister.

Senator Connolly: Because of the fact that these witnesses have a special capability on the marketability of securities, I wonder whether they have considered this: What is the effect on the marketability of Canadian securities in the face of this act with respect to, say, convertible debentures, or rights, or the realization of debt securities? Is it going to make Canadian securities of that character more difficult to sell? Are people going to have to be on the watch for the fine print in the prospectus or even on the certificate itself? Perhaps I have said enough to indicate the general idea.

Senator Flynn: If you had a socialist government using this legislation, there could be an entirely different situation.

Mr. Kniewasser: Absolutely.

Senator Flynn: As to the uncertainty of the investors or the investment market—

Mr. Kniewasser: But most countries of the world have a procedure like this.

Senator Connolly: You would have to be on the alert for securities of this kind, especially foreign securities. What about the marketability for Canadian securities, with the conditions that are built into them through this proposed bill?

Mr. Meech: We have already mentioned the possible problems that we see, without the exemption in here, on

the rights issue and convertible securities. On the question of debt securities, there are problems which have been fixed by amendments, without which we would not have been able privately to place bonds with a New York institution. That has been fixed up.

But assuming that the exemptions that we have mentioned are put in, I think it is true to say—perhaps Mr. Crosbie of Wood Gundy might want to speak to this—that it is bound to have an unsettling effect in general because of what could happen when the rights are out. You have always got to worry about who is getting them, who is buying these convertible securities in the secondary market. If it gets into the hands of a non-eligible person, immediately it contaminates the Canadian company, and from that time on the Canadian company, because some person in the secondary market picked up enough debentures to acquire 5 per cent of the stock, can no longer acquire a Canadian business without going through this review process. I believe it could have quite a wide-ranging effect that nobody can yet quite get their fingers on.

Mr. Allan H. T. Crosbie, Assistant Vice-President, Wood Gundy Limited: I think you have raised an important point. Certainly there are cases where, say, a junior company might wish to do private placement of convertible debentures or small private placement of shares with one of the big life insurance institutions, or mutual funds, or something like that. That might represent 10 or 15 per cent of the shares of that company. They might be reluctant to do that because they would then fall within the guidelines and become a non-eligible person. So I think it could have an adverse impact on companies like that. It will have an adverse effect.

Senator Connolly: Are there any suggestions that the association has for remedying this proposal?

Mr. Crosbie: In the type of case that I have spoken about, we think the summary procedure on acquisition of control might be one way of getting around this, whereby a junior Canadian company would be able to come to the review board and say, "We are selling 10 per cent of our stock to this institution. It is a foreign-controlled life insurance company. We do not believe this is acquisition of control. We would like you to confirm that."

Senator Flynn: It could become an acquisition of control.

The Chairman: We can see the benefit of a fast ruling, as long as it is couched in language that makes it workable.

Senator Flynn: It would be an acquisition of control in a case like that. But I do not think there is any solution there.

The Chairman: Even if it is an acquisition of control, the bill would permit the minister and the Governor in Council, in a proper case, to decide that you can still do it. What you want is an answer on that as quickly as you can get it.

Senator Flynn: You are stating that you would go to the summary procedure to say that this is not an acquisition of control.

Senator Connolly: I may be wrong, but the decision would be that it is not an acquisition of control. I think it would be judged an acquisition of control, but that you could go ahead with it. But you still would have a contaminated company, as you described it, Mr. Meech,

because it would want to acquire another Canadian company. Then it would be in difficulty. Am I right about that?

Mr. Meech: Yes, you are.

Mr. Kniewasser: That is why the jacking up of the figure from 5 to 10 per cent is an interesting thought in cases described by Mr. Crosbie.

Mr. Crosbie: I think you have raised a good point on the contamination question. Many Canadian companies will become concerned that by selling some of their securities to foreign institutions they themselves will become contaminated. This becomes very important, because the bill has now been expanded to include expansion by companies to new or unrelated businesses. This will tend to limit the market by which Canadian companies can sell their securities.

The Chairman: What would you suggest to overcome that, other than by scrapping the bill?

Mr. Kniewasser: They are all laid out in our brief.

Mr. Meech: We have one specific suggestion. It is rather technical; it is a difficult area. The previous bill was amended to make sure that the lending of money by a New York institution on a preferred basis would not constitute an acquisition of control. It was also amended to make sure that if that company had to enforce its rights under its mortgage in due course, that would not represent an acquisition of control.

Senator Connolly: Mr. Gaultieri was here from the department and he told us—I think I am right—that on the realization of security they would acquire control. Did he not say that?

Mr. Meech: The act was specifically amended, to our knowledge, at our request, to make sure that did not happen. I think that is all right.

Senator Connolly: Then I may be wrong.

Mr. Meech: I must direct you to certain sections. Perhaps you would look at page 11 of our brief.

The Chairman: you mean the part of the bill that deals with portfolio investment?

Mr. Meech: No. The point I am trying to make is that, while they made these amendments to ensure that you could have secured debt without saying "acquisition of control," they did not make a similar change in exemption in the clause which says that if you have a right to acquire property you are deemed to be in the same position of control of the property as if you actually owned it. It means that if, say, a foreign bank loans a Canadian company X dollars on a floating charge, say the Mercantile Bank, which is a non-eligible person, without the amendment I am suggesting it would mean that the company to whom Mercantile Bank loaned the fund would immediately become contaminated, because it would become controlled by the Mercantile Bank under this bill. I am sure that is not the intention of the draftsmen.

The Chairman: you would have contamination right away.

Mr. Meech: Just because they borrowed money from, say, Mercantile, on a floating charge. The reason they would have it is because the Mercantile's right to get the property is deemed to be the same as if they owned the property and thus controlled it.

The Chairman: So while they could do the transaction, from there on they are a non-eligible person.

Mr. Meech: That is right, just because it had this bank loan.

The Chairman: That would appear to be something that should be corrected. Have you a form of words?

Mr. Meech: We think there should be a very similar wording to what they have already put in, because I do not think they intend this. We think that something very similar to what is in paragraph (d) on page 11 should be put in. There is an exception that starts on the fifth line, commencing:

... except where it is established that the right was acquired.

Similar language put into paragraph (c) above would correct this problem.

Senator Flynn: If we exempted the real estate corporations, would that cover most of your cases of that kind?

Senator Connolly: Not for the floating charges.

Mr. Meech: No, sir, it would not.

Senator Flynn: With the bond issue.

The Chairman: there is only one other question I wanted to raise. We have had some discussion on the constitutionality of this bill. The Department of Justice representative has appeared here and expressed the view that the bill is constitutional. I am not sure that he made a great deal of headway before this committee, but that is just one man's view. We had Mr. McKeough here yesterday from the Province of Ontario, and he was ready to accept the advice of his advisers that the bill was constitutional, but in the course of developing his brief he said this:

Ontario stresses that the provinces should alone be responsible for articulating their policy positions to the federal government, as an integral part of the process of federal-provincial consultation.

Obviously, that means you would have to write something into the bill in order to accomplish that. In writing that into the bill and giving it effect, you might be confirming the constitutionality of the bill.

If you are going to give the provinces, and the provinces alone, the right to dictate under paragraph (e) of the factors, the only way it would appear you could do it under this bill would be by amending the bill. I do not think you could do it by guideline. I do not think you could do it by policy statements by any federal minister. Yet there is a real question at issue there.

How do you make effective the role of the provinces? We have the Maritime Provinces saying, "Thank you. We don't want the bill. We won't be able to reach out and take all of the money that is offered to us, whenever it comes from." The Provinces of Ontario, in its brief, was concerned that the bill might be used in the issue of regional disparities and for the purpose of correcting them. If

there are these possibilities, what you are doing is building up a wonderful case for a confrontation in the courts on the question of the constitutionality of the whole bill.

Senator Connolly: It goes further, Mr. Chairman. If it is done that way, in effect the federal Parliament is legislating for the province in the provincial field.

The Chairman: That is right. There are serious questions, and some person is likely to get badly hurt by a "No" answer under this bill and is very likely to challenge the validity of the whole structure. If this bill carries your support to the extent that your president has stated here today, you should be anxious to see it in a form in which you can escape such a challenge, otherwise you just throw the whole thing into the courts for an indefinite period of time.

Mr. Meech: Have you heard the Canadian Bar Association brief on this, sir?

The Chairman: I have read it.

Mr. Meech: Have they commented on that? I have not read it. Did they get into the constitutionality?

The Chairman: I do not think so. At this time the Canadian Bar Association, although we invited them to appear before us, felt they had not enough time adequately to prepare their brief. I do not know whether that was a reflection on the committees of the other place, because they did file a brief there. Maybe they were concerned about the quality of the brief they might have to file here.

Senator Flynn: That is the only possibility.

The Chairman: Are there any other questions?

Let me put my usual question. Have you any other points you would like to bring forward at this time?

Mr. Kniewasser: We would like to thank you, sir, and your colleagues on the committee for having us here today. We appreciate the way we have been dealt with.

The Chairman: Have any honorable senators any further questions they would like to put?

Senator Connolly: We would like to thank the witnesses.

The Chairman: On behalf of the committee, thank you very much, we appreciate the help you have given us.

The hearing concluded.



FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

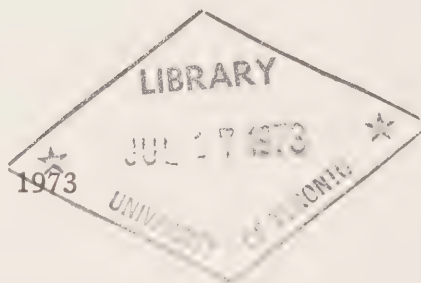
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

Issue No. 14

THURSDAY, JUNE 21, 1973



**Second Proceedings on the Examination and Consideration on Bills Based
on the Budget Resolutions Relating to Income Tax in Advance of the
said Bills Coming Before the Senate**

(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate of Canada, 14th June, 1973, Page 223.

The Honourable Senator Connolly, P.C., for the Honourable Senator Hayden moved, seconded by the Honourable Senator Laing, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider any bill based on the Budget Resolutions relating to income tax in advance of the said bill coming before the Senate, or any matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

(Signed) Alcide Paquette,
Clerk Assistant.

Minutes of Proceedings

Thursday, June 21, 1973.

(14)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 11.45 a.m. to examine and consider bills based on the Budget Resolutions relating to income tax in advance of the said bills coming before the Senate. (Bills C-192 and C-193)

Present: The Honourable Senators Hayden (*Chairman*), Connolly (*Ottawa West*), Cook, Flynn, Gelinas, Laing, Molson and Smith. (8)

Present, but not of the Committee: The Honourable Senators Lafond, Heath and Forsey. (3)

In attendance: Mr. Charles B. Mitchell, C.A. and Mr. T. S. Gillespie, Consultants.

The following witness was heard:

Mr. M. A. Cohen,
Assistant Deputy Minister,
Department of Finance.

At 12.40 p.m. the Committee adjourned to the call of the Chair.

Attest:

Georges A. Coderre,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Thursday, June 21, 1973

The Standing Senate Committee on Banking, Trade and Commerce met this day at 11.45 a.m. to examine and consider any bill based on the budget resolutions relating to income tax in advance of the said bill coming before the Senate, or any matter relating thereto.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us Mr. M. A. Cohen, Assistant Deputy Minister, Department of Finance. We may be able to deal with five or ten more sections of Bill C-193, with Mr. Cohen's help.

Mr. Cohen, I notice that Bill C-192 received second reading in the House of Commons.

Mr. M. A. Cohen, Assistant Deputy Minister, Department of Finance: Yes, sir, yesterday.

The Chairman: Did they propose the amendment we were discussing?

Mr. Cohen: No, I think that would be left over.

Senator Flynn: The bill was referred to Committee of the Whole.

Senator Connolly: Is Bill C-192 in Committee of the Whole?

Senator Flynn: It is not yet, but it is going to be.

Senator Connolly: And Bill C-193, is it going to a standing committee?

Senator Flynn: I do not know.

Mr. Cohen: They are both going to Committee of the Whole.

The Chairman: We had gone as far as including clause 10 yesterday evening when we finished with you. So that you will know for how long you are going to be working, we are going to sit until 12.30.

Mr. Cohen: That is fine, sir.

Senator Connolly: Mr. Chairman, in his general discussion yesterday Mr. Cohen covered clause 11 pretty well.

The Chairman: We have dealt with clause 11, so that takes you right into clause 12.

Senator Flynn: Before we leave clause 11, I wonder if Mr. Cohen has been able to work out an example of

the way clause 11 operates. We were trying yesterday to have some figures.

The Chairman: Senator Flynn, if you simply turn a little to your left, you can see that Mr. Cohen was regretting the absence of a blackboard. We have a blackboard there now, and we can move it up here if you wish.

Mr. Cohen: Honourable senators, I wonder if I may make a couple of comments?

The Chairman: Yes.

Mr. Cohen: Clause 11 is not the indexing clause. We will come to that one. This is the one that changes the exemption; it does not index them. This is the absolute increase.

Before we get into a discussion of these clauses, I wonder if I might, with your permission, make two comments. Senator Smith yesterday was concerned about the definition of "processing", as it relates to the fishing industry. This is in Bill C-192. I have been advised by the Department of National Revenue that the activities of a corporation engaged in fish processing that would qualify as a manufacturing or processing activity would include the smoking, salting, pickling, boiling, filleting or freezing of fish. Now, senator, that is not an exhaustive list—there may well be others—but these certainly will be.

The Chairman: That certainly covers the point we were talking about yesterday.

Senator Smith: Thank you very much.

An Hon. Senator: What is a round fish?

Senator Smith: That is a fish with its throat cut and nothing else taken away from it.

The Chairman: A round fish is a flounder.

Mr. Cohen: Senator Connolly asked me a question yesterday and I gave an accurate answer but perhaps not a full enough answer. Perhaps I could correct the record. It was as to how we come to know about loopholes.

Without making a long speech, I do want to indicate to this committee that one of the major sources by which we come to know about loopholes is the profession itself, the lawyers and accountants, particularly the Joint Committee of the Bar and the CICA, who very often, in the course of bringing to our attention what they consider to be anomalies, things that pinch too tight, quite fairly

will also bring to our attention what are obviously loopholes. I did not want to let that go by without saying it.

Senator Connolly: That is a tribute to the two professions. Thank you.

The Chairman: So, if you want to know where the loopholes are, you go to the Bar Association instead of to your own lawyer.

Senator Flynn: You always inform the department after you have used it.

Mr. Cohen: That takes us to clause 12. This concerns the notion of what we call taxable Canadian property. This is the kind of property that, if a non-resident Canadian owns and then sells, we wish to impose our capital gains tax on. That is the sort of general approach we have adopted. It involves real estate, business interests, and a list of other items. One of the items in that list is partnerships; that is to say, if a non-resident has an interest in a Canadian partnership and he disposes of that interest, we want to collect our capital gains tax, if it is applicable, if there is a profit in it.

We have a definition for determining what is or is not a Canadian partnership, and the approach we have used is to look at the assets of the partnership. If there are substantial Canadian assets, then we presume it is a Canadian partnership. The amendment here is simply to add another type of property to that list of taxable Canadian property; it is the Canadian resource property. If a partnership consists principally of Canadian resource property, we want to consider it as a taxable Canadian property. That is what clause 12 is designed to do.

Senator Connolly: Surely it is covered in the main act, is it not?

Mr. Cohen: No, sir.

Senator Connolly: Did it not cover all Canadian properties?

Mr. Cohen: No, we had a specific list. Only certain types of properties were covered, and this one was not on it.

Senator Connolly: I see.

Mr. Cohen: It is a partnership asset. For example, if an American owned a Canadian resource property, that was dealt with; but if he were only interested in a partnership, which in turn had nothing other than a Canadian resource property, then we had not. It was that second stage we had not dealt with, and that is what this amendment deals with.

Senator Connolly: That is a loophole I would not have been able to discover.

The Chairman: Are there any other questions on this?

Mr. Cohen: Clause 13 deals with the obligation on a Canadian who is purchasing property from a non-resident, to deduct a withholding tax in anticipation of the capital gains tax that that non-resident would be subject

to. This amendment is, by and large, relieving; it reduces the amount of the withholding tax that has to be deducted.

We had a lot of difficulty with this section at the beginning, but the administration of it, with the co-operation of National Revenue, has been smoothed out considerably, and this puts the finishing touch to it, we hope.

The Chairman: But you have not changed the percentages of withholding?

Mr. Cohen: No. The basic percentage is 15. What we have now said is that, in certain situations, less than 15 per cent is required.

The Chairman: Where are the certain situations?

Mr. Cohen: You are obliged to withhold the lesser of 15 or 25 per cent of the amount by which the purchase price exceeds the amount that you said it was going to be. Now, 25 is a bigger number than 15, but we are dealing with lessers here, so the maximum withholding is 15, and in certain circumstances it can be less.

Senator Flynn: One who is not in business would hardly know about this obligation.

Mr. Cohen: I suppose that is true.

Senator Flynn: Suppose I sell my house to a United States resident.

Mr. Cohen: You would be buying here, from a United States resident. This is a purchaser's obligation, not a seller's.

Senator Flynn: Oh, the purchaser's obligation.

Mr. Cohen: Yes. It is the Canadian purchaser buying from the non-resident seller.

Senator Flynn: So you would be paying less. Even in this case an ordinary person would hardly know.

Mr. Cohen: That may be true, but professionals have knowledge and most people buying real property use a solicitor, and the solicitors across the country are aware of this, I think.

The Chairman: I should think that among real estate practitioners the practice would develop that in every case they would require a declaration from the vendor that he is not a non-resident.

Mr. Cohen: I think that is developing in fact, sir.

Senator Flynn: That would apply not only to real property; it would apply to anything.

Mr. Cohen: But in the case of most of the other assets, you would not be buying them as a private citizen; you would be in business before you would be buying one of those assets.

Senator Flynn: Not necessarily; you may be buying a painting.

Mr. Cohen: But a painting is not a taxable Canadian property; it is not a piece of property included in the list of taxable Canadian properties.

Senator Flynn: But the capital gains tax certainly applies to paintings.

Mr. Cohen: Yes, if you are a Canadian, but if you are a foreigner who owns a Canadian painting, you are not subject. We only really try to tax the foreigner on substantial and important assets here in Canada.

The Chairman: Well, you are assuming that if a resident of Canada buys a property in Canada which is owned by a non-resident, that non-resident is going to take the money out of the country, but suppose he re-invests that money in another property in Canada?

Mr. Cohen: That is all right, but it does not affect the tax liability.

The Chairman: Why are you creating the tax liability then?

Mr. Cohen: The purpose of the tax is not necessarily because of the fear that the funds will flow across the border. The purpose of taxing the non-resident is to reach a position where the non-resident is not in a better position than his Canadian counterpart. We want to maintain some balance between investment possibilities. We do not want the situation where the Canadian investor who sells a piece of real estate is subject to a capital gains tax while a non-resident who owns the land next door can sell it free of capital gains tax.

The Chairman: Is it clear that the withholding tax you are talking about is in relation to any capital gains?

Mr. Cohen: Oh, yes. This is not the normal form of withholding tax; it is a special tax.

The Chairman: When you used the words "withholding tax", I naturally concluded that you were talking about the ordinary withholding tax.

Mr. Cohen: My apologies, senator.

The Chairman: This is to cover the question of capital gains?

Mr. Cohen: Yes.

Senator Cook: Can a non-resident have a Canadian principal residence? In other words, if he has only one residence and sells it, does he pay a capital gains tax?

The Chairman: If he is a non-resident, how can he have a principal residence in Canada?

Senator Cook: You can have anything under the Income Tax Act.

The Chairman: How could he have a principal residence which one might be able to recognize in that context?

Senator Cook: You can have two residences for the purposes of the Income Tax Act.

The Chairman: You can have any number of them; you can have ten residences.

Senator Cook: My point is that a Canadian who has only one house, his principal residence, pays no capital gains tax; and I am wondering if an American who happens to be here as a non-resident and has only one house would be in the position where that house would qualify as his principal residence.

Mr. Cohen: For Canadian tax purposes, senator, I am advised that the answer is no. We only grant principal residence status to somebody who ordinarily inhabits that home, which would make him a resident. It is kind of circular, but that would make him a resident.

Going on to clause 14, we spoke of this change in the tax table, increasing it from \$12,000 to \$24,000. We spoke of this yesterday. It will help many people by permitting them to pick their tax liability right off the table.

The Chairman: Is this the item which Senator Flynn was questioning yesterday?

Mr. Cohen: No, Mr. Chairman.

The Chairman: This is simply a revised tax table computation.

Mr. Cohen: That is right. It is just increasing the amount.

Clause 15 is the clause you want, I think, Mr. Chairman, which deals with indexing.

The Chairman: Oh, yes.

Mr. Cohen: I have prepared an example for you, which I hope will be of some assistance. Actually, there are two examples here. The first example is designed to indicate how this will affect the person whose income rises in response to the increase in the cost of living. We have assumed, for the purposes of the example, that the taxpayer is a married man with two children under 16, with a wage income of \$8,000. He would have \$3,850 of basic deductions before this indexing proposal starts. He would have \$3,000 because he is married; he would have deductions for the two children of \$300 each; he would have the standard medical-charitable deduction of \$100 and the employment expense allowance of \$150. That totals up to \$3,850. Those are his exemptions.

One then has to look at what is done with the taxable income after deducting the \$3,850 from the \$8,000. This will take effect only in 1973; that is when it starts. He pays a federal rate of 15 per cent on the first \$500 of taxable income. On the next \$500 he pays a rate of 18 per cent and progressively higher rates on each successive slice of income. His marginal rate, the rate he pays on taxable income in the last bracket he reaches, would be 21 per cent in this example. When his basic federal tax is determined in this way, a provincial tax is applied as a percentage of the federal tax. Finally, one has to apply the 5 per cent minimum \$100 cut which we talked about as well, and that will also be

applicable here. Minus the indexing next year, his tax would be \$939 as a result of that whole exercise.

Now, the question of interest to you is what does the indexing do to the system. Assuming that the same taxpayer's income increased 4 per cent, to \$8,320, and the inflation factor was 4 per cent as well, you can see that all of the exemptions would be increased by 4 per cent. That would increase the total of his exemptions from \$3,850 to \$3,994. So the first thing is that an extra sum of income will not be taxed at all.

Now, his first bracket of taxable income, instead of being \$500, would be increased by 4 per cent to \$520. Each of the brackets after that would likewise be increased. So that the 15 per cent, which is the rate on the first bracket of taxable income, would apply to \$520 and not to \$500. That means there is less income which would attract a higher marginal rate—the next one being 18 per cent. The result of all that is that he will pay \$984 in tax. His tax without indexing would have been \$1,027.

Senator Cook: But I thought he was going to get \$100 deduction.

Mr. Cohen: I have taken that into account.

Senator Cook: But if he got the \$100 deduction, his tax should be only \$927 as compared with last year.

Mr. Cohen: Without indexing he would have paid \$939. I am sorry. On \$8,000 of income he would have paid \$939. On \$8,327 he would have paid \$1,027. The effect of the indexing is to bring that tax down from \$1,027 to \$984, after taking into account indexing and the 5 per cent cut. All of that is absorbed into the exercise. The important point to know—I have lost you senator?

Senator Cook: I thought the deduction minimum was \$100, and a minimum of \$100 off last year's tax would bring you down to \$927. But you show it as \$984, so the minimum is lost in the wash.

Mr. Cohen: I am not sure where you have lost the \$100. That is taken off at the last step; that is the last thing you do.

Senator Cook: Well, then, his tax should be \$884.

Mr. Cohen: But I have taken it off and I have given you a net number.

The Chairman: You mean that when you give us the \$939 figure, that is after the \$100 is taken off; all these figures are net with the \$100 deduction?

Senator Forsey: And the \$984 figure is after the \$100 is taken off.

Mr. Cohen: Yes.

Senator Forsey: The same process has been followed in both cases.

Senator Cook: But my point is that without the \$100 deduction, with indexing he would have paid more tax and without indexing he would have paid \$1,084 as against \$1,027.

Mr. Cohen: As against \$1,127. You have added the \$100 to the \$984 but not to the \$1,027. All these figures are after the deduction of \$100.

Senator Cook: Oh, I see. His tax without indexing would have been \$1,127. I am sorry. I understand it now.

Senator Connolly: I think that is pretty good.

Mr. Cohen: The second example repeats the exercise but considers the individual who did not get the four per cent increase. You can see that his actual tax is down from what it was last year. The cost of living went up by four per cent, but his income did not rise by four per cent—he is on a fixed income system—so his actual tax goes down.

Senator Molson: Why are his deductions only \$2,804 instead of \$2,808?

Mr. Cohen: That may be a function of my mathematics, senator.

Senator Molson: Four per cent would seem to me to be \$108.

Mr. Cohen: But there are some deductions, senator, that are not being indexed. The \$100 standard medical and the \$150 employment expense are not indexed.

Senator Molson: And then we have to take the \$100 off both ends too.

Senator Flynn: The net result is rather interesting, Mr. Chairman. After payment of his tax for this year he is left with \$7,061, and the following year, after payment of his tax he is left with \$7,336, a difference of \$275. That is a net income of \$275 more than in the previous year. So if you calculate that 4 per cent of his net revenue in the previous year it is \$280, which is about the same.

Mr. Cohen: That is what we were trying to achieve.

Senator Flynn: He loses, in fact, \$5 or so, which is not too much.

Mr. Cohen: We were trying to leave him with the same net purchasing power that he would have had the previous year.

Senator Flynn: I find that the idea given to the government was rather a good one.

Senator Connolly: The next time, Mr. Cohen, will you come up with one that is a little easier to get at?

Mr. Cohen: This is difficult to comprehend in the abstract, but in terms of its application to a taxpayer it is quite simple because it will all be reflected by the department in the form.

Senator Molson: An easy form?

Mr. Cohen: I am not saying that. But this aspect of it will all be absorbed right in.

The Chairman: What you are saying is that it may not be easy, but it may be less difficult.

Now we have been dealing with clause 15. Shall we move on?

Senator Flynn: The second example is not that good. In the second case, where there is no increase, he does not save 4 per cent of his net income.

Mr. Cohen: But I think you will find, if you do the same exercise as before, that his net purchasing power after tax is the same as it was before.

Senator Flynn: There is only a difference of about \$27.

Mr. Cohen: But if you take his net after tax and increase it by 4 per cent...

Senator Flynn: But with 3 per cent, you should have \$120 more. If you deduct from \$4,190 you will get a net income of \$3,810. Then the next year he would get the same amount, \$4,000, less \$163.

Mr. Cohen: Well, senator, if you take the \$3,810 he has and increase that by 4 per cent to see how much more he needs, I think you will find that that is roughly the \$27 extra he has in hand.

Senator Flynn: But 4 per cent of \$3,800 is \$152.

Senator Cook: Are you forgetting the \$100?

Senator Flynn: He saves \$37 in tax, but if the cost of living represents 4 per cent of his net previous income, he would have to save \$152.

Senator Cook: But is he not saving \$127 over that, because he is getting \$100 back?

Senator Flynn: The result is here; I have just made the calculation.

Mr. Cohen: That is right; you cannot keep him in the same position because he has not enjoyed an increase in income. It does not work so well in the context. It reduces his tax, but does not fully offset.

Senator Flynn: In his case he would not save as much as \$37 against an increase of \$152.

Mr. Cohen: In cost of living.

Senator Flynn: Yes.

Mr. Cohen: He has not had that extra income.

Senator Flynn: Yes.

Mr. Cohen: That cannot be held through the system.

Senator Cook: You helped him by giving him the \$100.

The Chairman: The question which presents the problem—and, I suppose, no solution could be found—is if the consumer index shows an inflation factor of 4 per cent, this man has not increased his income, but I am sure he has had to put more elastic in his fixed income than the \$4,000. Because he has not increased his income, he does not receive the same benefit as the person who has done so. I thought the intent was to

pass on the inflation factor to everyone, but this does not do that.

Mr. Cohen: It does not do it completely.

The Chairman: It does not do it completely.

Mr. Cohen: That is correct in that example, sir.

Senator Flynn: I wonder if we were to apply that to a higher income it would correct itself more?

Mr. Cohen: Likely it would. There is not much tax involved, so it is a difficult example.

Senator Flynn: That is correct, because the amount of tax is so low.

The Chairman: Older people who live on fixed incomes do not receive the same benefit of the inflation factor.

Mr. Cohen: That is because their incomes are fixed.

We are now at clause 16, senator, which is simply a technical, consequential change. As a result of changing the exemption from \$1,500 to \$1,600 there are a number of places in the act in which \$1,500 is the relevant figure and has to be adjusted. In this particular case it is just the general average and just changing the use of the figure.

The Chairman: Yes. The note I have is that this clause 16 is simply an adjustment to reflect the increased exemption.

Mr. Cohen: Yes, sir.

The Chairman: There are no questions respecting that?

Mr. Cohen: We have discussed clause 17. This is the five per cent, \$100 deduction.

Senator Cook: Yes, which on the other hand, gives greater benefit to the lower taxpayer.

Mr. Cohen: Yes, indeed.

Senator Flynn: Yes, because \$500 on \$30,000 tax is not a very large gift.

Senator Cook: You would be able to buy a bottle of French wine with it!

The Chairman: Are there any questions on Clause 17? Clause 18.

Mr. Cohen: We have already discussed this, which relates to the foreign state taxes. We discussed that yesterday.

The Chairman: The note I have with regard to that—and you can tell me whether this is right or not—is that this deals with the deduction for foreign income or profits tax, and this subclause is consequent on the repeal of section 20(12) of the act and by clause 3(1) and provides for the repeal of clause 126(7)(a) and 126(7)(c)(ii). I am then supposed to look also at clauses 1, 3, 10 and 18. Why?

Mr. Cohen: Clauses 1, 3, 10 and 18 are those which repeal the deduction of foreign state taxes. This is the clause which replaces that by a credit for foreign state taxes.

The Chairman: Honourable senators, the Senate is sitting this afternoon. We have had a good morning. The Senate, I presume, will resume next Tuesday afternoon or evening, and we have hearings scheduled for Wednesday and Thursday. It depends on the availability of Mr. Cohen and it is too early to settle a definite date. We might adjourn to the call of the chair and if the Senate sits next Tuesday afternoon, which it may because Monday is a parliamentary holiday, we might resume our meetings and discussion of this tax bill during Tuesday afternoon, if that is agreeable.

Senator Connolly: During the sitting of the Senate?

The Chairman: We can obtain leave; yes, that is what I mean. As soon as we have definite information we will issue notices.

Senator Laing: Will we be discussing the National Parks Act next Wednesday? I have to be in Vancouver.

The Chairman: I should inform honourable senators that I received a telephone call yesterday afternoon from the Deputy Minister of the Department of Financial Institutions, Companies and Cooperatives of the Province of Quebec, Mr. Lalonde. He was speaking for Mr. Tetley, who is the minister, and inquired into how much longer we plan to sit. They are giving almost immediate consideration to the question of appearing before the committee.

Senator Connolly: Is that in connection with the takeover bill?

The Chairman: Yes, the takeover bill. I indicated to him that our last day of hearings will be on June 28, which is next Thursday, and that if he wished to appear on Thursday morning we would hear him.

We must not forget that on Wednesday representatives of the Committee for an Independent Canada will appear. I am sure you will find their testimony very interesting and challenging.

We still have not heard the minister. I was supposed to see him this morning at 9 o'clock, but subsequently got tied up and the net result was that I did not see him. I myself may be tied up the next time, so if the minister does not appear in time we will go ahead and deal with the bill anyway.

Senator Laing: I would like to see the parks bill out of the way; we should be rid of it. However, I believe we are waiting to have a meeting with the minister.

The Chairman: Senator Connolly presided at that meeting and I am not as familiar with the disposition of the parks bill. Someone was to speak to the minister; then I believe there was a decision made not to do so. I do not know.

Senator Laing: It was understood, I think, that the committee wished to have the minister appear.

The Chairman: How long do you think it would take?

Senator Connolly: I do not think it would take very long. We have considered the bill itself very carefully.

The Chairman: Is it simply to ask the minister some questions? Would it be half an hour, or an hour.

Senator Connolly: It would be no more than one hour, maybe less.

Senator Laing: I would say one hour.

The Chairman: I doubt if the Senate would sit next Tuesday afternoon and evening. We could tentatively fit it in. We do not have to notify any outside witnesses in connection with the parks bill if the minister is available.

Senator Laing: It could be done without me; I have to be in Vancouver until Thursday.

The Chairman: I am not sure whether we should grant you an exit. Will you not be here next week?

Senator Laing: I will be here on Thursday. I am returning on Wednesday.

The Chairman: Suppose we check with the minister to see whether he can be available on Thursday. I think you should be here in connection with the bill. We will try to set it up for some time next Thursday.

The committee adjourned.



FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 15

WEDNESDAY, JUNE 27, 1973



Eighth Proceedings on the Examination of the Document intituled:
"Foreign Direct Investment in Canada"

(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio members*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 16, 1973:

“The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the document entitled “Foreign Direct Investment in Canada”, tabled in the Senate on Monday, 15th May, 1972, and the subject-matter of any bill arising therefrom, in advance of such bill coming before the Senate, or any other matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.”

Robert Fortier,
Clerk of the Senate

Minutes of Proceedings

Wednesday, June 27, 1973.

(15)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.40 a.m. to examine and consider the document intituled: "Foreign Direct Investment in Canada".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Buckwold, Burchill, Connolly (*Ottawa West*), Cook, Flynn and Smith. (8)

Present, but not of the Committee: The Honourable Senator Manning.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Messrs. Charles Albert Poissant, C.A., and Robert J. Cowling, Consultants.

The following witnesses were heard:

Committee for an Independent Canada:

Mr. John Trent;

Mr. Jack Bidell, Treasurer.

At 11.30 a.m. the Committee adjourned to the call of the Chair.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, June 27, 1973

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the document entitled "Foreign Direct Investment in Canada".

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, appearing before the committee this morning are representatives from the Committee for an Independent Canada. Appearing are Professor John Trent, Chairman, Policy and Research Committee, and Mr. J. L. Biddell, Treasurer and Toronto businessman. Mr. Biddell has appeared before this committee on previous occasions with respect to bankruptcy matters.

I understand Professor Trent will lead off the discussion. You can assume we have read the brief, Professor Trent. I understand you have an opening statement.

Senator Connolly: I realize you have given the names of the witnesses, Mr. Chairman, but I wonder if they could identify themselves for purposes of the record.

Professor John Trent, Chairman, Policy and Research Committee, Committee For an Independent Canada: I am a professor of Political Science at the University of Ottawa. Appearing with me is Mr. Jack Biddell, Toronto businessman and president of the Clarkson Company.

Mr. Chairman, since honourable senators have read the brief, we could go right to Mr. Biddell's opening statement. I had intended to give a brief resumé of the highlights of the brief, but I do not know whether that will be necessary.

The Chairman: The only word that you would need to define, in order that we may make a determination, is the word "brief."

Professor Trent: Approximately ten minutes.

The Chairman: Fine.

Professor Trent: I think I should first deal with the conclusion that we came to as a result of our study of Bill C-132.

The Chairman: Before you develop that, Professor Trent, I wonder if you could tell us what this organization is.

Professor Trent: That is going to eat into my ten minutes!

The Chairman: That is all right; we really should have that.

Professor Trent: The Committee for an Independent Canada is a committee of Canadian citizens founded in 1970 by people such as Walter Gordon, Eddie Goodman, Jack McLelland, Abraham Rotstein, Claude Ryan, and various other interested persons.

The Committee for an Independent Canada came into being because of the concern respecting the levels of foreign control over Canadian life; and by that we mean the economic, cultural, political and social.

I think there is mainly an economic thrust to the Committee for an Independent Canada. The Committee worked for the first year and a half to bring the issue of foreign control over Canadian life to the attention of the public. The Committee created a series of organizations across the country, local committees, and also put together a petition to the Prime Minister, and saw the Prime Minister in, I think, June, 1971, petitioning him to take a stronger stand on the question of foreign controls. In particular, we were anxious that the Gray Report be a strong one, and that the legislation coming from the Gray Report be strong legislation.

In the course of this effort we found that we were really touching the tip of an iceberg, because there seemed to be quite a lot of apathy and ignorance about the facts that currently direct Canadian life. The Committee has therefore become a much more long-term project than it had originally been intended to be. It has formed itself into chapters across the country. I think at the present time there are about 20 or 25 in various cities across the country. I believe that we presently have about 8,000 to 10,000 members. We have chronic debt. Generally, our existence is for doing research, getting information, putting together policies on all the different areas and levels of foreign control in Canadian life.

Senator Burchill: Are there any committees in the Atlantic provinces?

Professor Trent: Yes. There is one in Halifax. There are several others; I am not just sure where. There is one in Saint John, New Brunswick, and one in St. John's Newfoundland. However, we are not particularly strong in the Maritimes.

The Chairman: I was wondering about the connotation of the word "Independent" as part of your descriptive title.

Professor Trent: The connotation of "Independent" means that Canada should have sufficient autonomy to be

able to direct its own affairs, whether it be in foreign affairs, economic or other matters. It is not an isolationist stance; it is not one of, "Close up the doors and kick everyone out!" In fact, we consider that the *raison d'être* of the Committee for an Independent Canada has been to find a half-way point between those who believe that we can do nothing about the situation of Canada, that we are completely dependent on the United States or other foreign interests and powers, and those who are what we call doctrinaire nationalizers, who say that this is the only path. We believe there is a middle road that we can follow. The independence is one of degree, based on having enough autonomy, so that we can act as a responsible member of the world community and be able to make decisions for ourselves, and within the international community.

The Chairman: What do we lack in the way of autonomy? I am interested in that word.

Professor Trent: Within the economic area we lack a degree of control over our own economic life. This would be within the foreign corporations that dominate many areas of the Canadian economy, up to 80 and 90 per cent—and in one case even almost 100 per cent. We feel that privately owned economic domination has a throw over into the political and cultural spectrum; that, for instance, the Government of Canada finds it that much more difficult to plan for the economy over a long period, to organize regional development and so on, if Canadian citizens do not control the economic mechanisms.

The Chairman: Would you say that the U.S. has a kind of autonomy that we do not have?

Professor Trent: The United States certainly does, yes. I can think of a few others.

The Chairman: Notwithstanding their world problems?

Professor Trent: Notwithstanding their world problems. We do not assume that by having autonomy we will get rid of our problems.

The Chairman: Then the problems have no relationship to whether we are independent or not?

Professor Trent: No.

Senator Beaubien: What control has the United States over Exxon that we have not here over Imperial Oil, as a government? Standard Oil of New Jersey, I am talking about.

Professor Trent: They can set guidelines; they can set taxing levels; they can set export levels; they can set policies with regard to where...

Senator Beaubien: Which government are you talking about now?

Professor Trent: The United States government.

Senator Beaubien: We cannot do that.

Professor Trent: We cannot do it with regard to Standard Oil in the United States.

Senator Beaubien: We are not talking about Standard Oil. I am talking about Imperial Oil. Standard Oil does not do business here. I am talking about Imperial Oil.

The Chairman: Senator Beaubien wants you to take your two examples, a company in the States and a company in Canada.

Senator Beaubien: What control have they got that we have not got?

The Chairman: In fuel oil. Where are the inhibitions so far as Imperial Oil is concerned in relation to Canada's control over them and what Canada can do, the way we can deal with them as against the counterpart of Imperial Oil in the United States?

Professor Trent: We have had some significant cases in the recent past of extra-territorial application of American controls over foreign businesses operating in Canada, their businesses operating in Canada. We can think of the case of the sale of Ford trucks in China, and so on.

Senator Beaubien: Would you stick to these two companies, if you don't mind? I am asking you a question. Can you answer that question?

Professor Trent: Perhaps I could ask Mr. Biddell to add to that.

Mr. Jack Biddell, Treasurer, Committee for an Independent Canada: With Exxon, in New York or New Jersey, the decisions as to where they will carry out their exploration activities and so on are made by the board of directors. People here in Canada, Canadian residents, do not make them. Those decisions that are made in the board rooms in Washington, or in other major cities outside of Canada, vitally affect the life of Canadians. They vitally affect how our resources will be used.

Senator Beaubien: Just a minute. Has the American government any control over what Exxon decides to do about exploration?

Mr. Biddell: No.

Senator Beaubien: I am talking about government interference in business now. In the States, the government of the United States does not tell Standard Oil, New Jersey, where they are going to explore. Therefore, it is the same thing. We have the same controls here as they have, except that there free enterprise makes its own decisions in a lot of cases.

Mr. Biddell: That is quite true. The decisions that are made by free enterprise in a country as large, as powerful and as populous as the States can have far less effect on the lives of the citizens there than those same decisions, and the power to make them, made in a country with as small a population as we have, particularly when those decisions are being made by people who do not live here, who do not bring up their families here, and who have no long-term interest in the lives of Canadians.

The Chairman: Do you think that the families of Canadians who might be directors of Imperial Oil in

Canada would make better decisions than the directors of the New Jersey company?

Mr. Biddell: I think they would have a greater impulse to do so in the long-term interest of Canadians, recognizing that they hope to bring up their families in this country.

The Chairman: Where are we leading to on the question of bringing in the families? Is that the kind of Canadianization you want, just so the families can do it?

Mr. Biddell: No. The kind of Canada we want is a Canada that will develop in the best interests of present and future Canadians. Where the bulk of the major economic decisions are taken in boardrooms outside this country, we do not think that in the long-term Canada will get the result it should.

Professor Trent: Perhaps I could go back to Senator Beaubien's question, because I would like to try to give some additional answers to it. The first one I should like to give is this. The American government is able, because of its legislation, to control to a great extent its corporations operating overseas. They can do this through a DISC program, which has an effect on where exports are being produced, where jobs are being created. That is one area in which the American government can control it. In addition, in a field such as petroleum, which is completely dominated by foreign corporations, the pricing structure—

Senator Connolly: Now wait a minute. Dominated where by foreign corporations? Dominated in Canada?

Professor Trent: In Canada by foreign corporations.

Senator Beaubien: But it is dominating the whole world. After all, it is the sheiks of Araby who are setting the price now, so where has the American government got the control of all this?

Professor Trent: The American government is only one part of the picture. You are asking two different questions. What we are suggesting is, first of all, that there are ways, and very definite examples of the American government, and increasingly so during the last decade, setting policies that affect the operations of their corporations in foreign countries. That is the first thing.

The second thing that is equally important is that we are talking about the Canadian government having a capacity to affect the conduct of foreign corporations in Canada—which is very much falling in the domain of legislation and government and is not just a question of the American government operating.

The Chairman: Could we analyze that just for one minute? You talk about the DISC program. The essential feature of the DISC program is that in the United States, if you have domestic companies in the United States that engage in manufacture for export, and to the extent that they engage in manufacture for export the profits that they make on that part of their operation, enjoy, I think, a 50 per cent reduction in taxes. Admittedly, the design of that was to keep more of the manu-

facturing operations and therefore employment in the United States, which is a legitimate purpose for the United States government. It is the same as if we could do it; it would be a legitimate purpose for us. Whether we can do it or not may be debatable, but our multinational companies are doing it, isn't that right? Massey-Fergusson is operating in many countries of the world; Alcan is operating in many countries of the world. They both seem to earn money and they are the two leading employers of labour in Canada, I understand from evidence we have had here, so they are able to be competitive in the export market.

Take the DISC program. We cannot interfere with what the United States does. That is their business. And if the Burke-Hartke bill goes through, where they would try to put a prohibition, through tax penalties, on what they call the export of jobs—that is, they would force Americans operating through subsidiaries abroad to bring home the work that is being done there and employ people in the United States—that is their business.

Professor Trent: That is their business.

The Chairman: That is a fair concept. How does that interfere with us? Would it take away any of our controls?

Professor Trent: What we are suggesting, senator, is that it is the business of the Canadian government to make sure that the Canadian business climate and the business climate in Canada is every bit as competitive, every bit as capable of providing these benefits for Canadian business and controlling what the foreign corporations may be doing in Canada, as the American government is for protecting its own boys; and we are suggesting that this is the responsibility of the Canadian Parliament.

The Chairman: You are trying to divide Canadian business in two: Canadian business having the Canadians operating it, and Canadian business being operated by other than Canadians. That is what you are trying to do, isn't it?

Professor Trent: This would be difficult because in most cases I believe in the case of foreign corporations in Canada they are Canadian citizens who often operate, and I do not think we can make a distinction. But we are talking about foreign corporations operating in Canada where the main decisions are made in the interest of the international corporation and usually—if it is home based, and not made in the interests of Canada—profits or jobs, or whatever it might be, in Canada. That is what we are worried about.

Senator Flynn: Can you quote an example of that, of a decision made by foreigners, if you want, that is not in the interests of Canada? Have you any case to quote?

Mr. Biddell: Senator, a short time ago you may have seen in the press a concern that the Philco Radio Corporation subsidiary operating in Canada has decided to close down its plant and manufacture all the Philco car radios, offshore, that hitherto had been manufactured in Canada.

Senator Flynn: Offshore?

Mr. Biddell: To move it back to the United States, in that particular instance. There is a great deal of that going on and, quite frankly, that particular problem is why I am in the Committee for an Independent Canada, because I see so much of it.

Senator Flynn: Would that decision be the result of the foreign control or the policy of the United States government or Congress, like the DISC program?

Mr. Biddell: Let's face it. The decision would arise from the fact that it maximizes profit for the overall concern which is centered in the United States. We feel it is up to the Government of Canada to take such counter measures as are reasonable and appropriate in the circumstances.

Senator Beaubien: Mr. Biddell, what would that be—that the Canadian government take over the manufacture, at some point?

Mr. Biddell: Not at all. I think the great majority of us are a free-enterprise people, and that is what we are interested in.

Senator Beaubien: That is what I would have thought.

Mr. Biddell: But the powers of taxation which the federal government has could be used to much better effect, and make it more profitable, more in the interest of Canadians and create jobs for Canadians, for that company to keep that sort of production here. They cannot do it in every instance, but things could be done far better than now.

Senator Flynn: What you are seeking now is the maintenance of the foreign control, the foreign control to remain in Canada, not to be discouraged.

Senator Beaubien: Mr. Biddell, the government has every control in that way now. It can change the taxation system tomorrow, if it wants to.

Senator Cook: What has this discussion to do with this bill?

Senator Beaubien: Let us not get into a discussion on that, because the government can change it any time it wishes.

Mr. Biddell: Our problem is that the government is not doing it, but that is not the subject of this bill.

Senator Beaubien: But independent Canada has that power now; it has every one of those powers; it can change the taxation on anything it wants. So it has the power. We are independent.

Mr. Biddell: I think we are labouring the word "independent". We may not have chosen the best title for our committee but, certainly, we are interested in the quality of life here, and that starts with jobs.

Senator Beaubien: We are all interested in that.

The Chairman: Mr. Biddell, on the question that you have been talking about, I have a couple of questions I would like to ask you. Can you tell me to what degree this decision making that you have been talking about, outside of Canada, does exist? Have you any statistics on that?

Mr. Biddell: I do not have statistics, Mr. Chairman, but I have a great many friends and business associates who work for Canadian subsidiaries of foreign corporations, most of them being corporations based in the United States. It is really unfortunate that so many of the senior officers of these so-called Canadian companies are little more than administration managers, public relations managers and, perhaps, assembly line supervisors. They really do not have the power of decision, to say what will be built here and where they will buy the supplies.

The Chairman: Right on that point, do you know—and I think that if necessary I could demonstrate it, if I felt free to do so—that the great ambition of many of these men who are working for Canadian subsidiaries is to do such a good job that they can get a transfer to the bigger organization in the United States?

Mr. Biddell: That is certainly a natural reaction of persons who want to get ahead. But I also have many friends who have reached the top, the president's chair, in the Canadian subsidiary and would not go to live in the United States under any circumstances.

The Chairman: Well, that is their choice.

Mr. Biddell: That is their choice.

The Chairman: And they are independent in that regard.

Mr. Biddell: That is right, but if those companies were centered here those employees would not be required to go to the United States to take on the role that they are eminently qualified for.

The Chairman: Or they may not have much of a job in Canada.

Mr. Biddell: I do not think that necessarily follows. If we use the taxing powers which Senator Beaubien indicates the government has, and truly it does have, then we can have fully integrated operations here in Canada, rather than just a few assembly lines.

Senator Flynn: Yes, but in the case you have just quoted, again, if we do that we maintain the foreign control that exists.

Mr. Biddell: It is the result of foreign control that we are concerned about.

Senator Flynn: The result of foreign control, yes.

Professor Trent: Senator, what we are here for really is this Bill C-132.

Senator Flynn: I know.

Professor Trent: And we are requesting that the bill be amended in such a way as to make it significantly stronger to do two things. One is to control the conduct of foreign corporations in Canada, which we are currently not doing in many areas, with regard, for instance, to research and development, with regard to the sourcing of products, parts and components. That is the first thing that we want to see this bill capable of doing. The second thing is that, because we realize the question is one of great complexity and great importance to Canada, we want to see the bill strengthened so that the review agency will gather information during the next several years on the operations of large multi-national corporations in Canada so that the Canadian legislators will be able to have the tools, the knowledge and the information necessary to provide legislation for adequate control of foreign corporations so that they will be operating in the best interests of Canadians.

Senator Connolly: Do you not think there is information available now in various research centres that would do just that? Your brief does call for the board to do research. If we followed your lead on that, would we not in fact be adding to the research facilities in respect of foreign ownership and foreign control? Have we not got that in this country now?

Professor Trent: Senator, when the Committee for an Independent Canada started its campaign three years ago, to the best of our knowledge there was one man in Ottawa in the Department of Industry, Trade and Commerce who, as a part of another job, was listing from the *Financial Post* and the *Globe and Mail* the take-overs that were being made of Canadian businesses by foreign corporations. That is all that was going on at that time. It has improved with the Calura reports and so on, but most of the statistics on which we base our current information of levels of control, types of control, where dividends and royalty payments go, and what type of decisions are made, and so on, are based on statistics from the U.S. Department of Commerce and are not Canadian statistics.

Senator Connolly: You mean Statistics Canada does not furnish that kind of information?

Professor Trent: Most of that information they do not have at the present time.

Senator Connolly: Even as a result of the activity of your committee they are not alerted to this?

Professor Trent: It is growing and it is improving, there is no doubt about that, but the type of information we really need is information from the inside, which can only come from an agency armed with the research staff and the authority to get that information. You know, the foreign corporations operating in Canada are not going to tell us, unless we ask them in a very definite and specific manner, how they do their sourcing of products, parts and components, or whether or not they could buy those in Canada but are buying them in their own foreign corporations because it is more

economical or profitable for their company on a world-wide basis. That sort of information you can only get from detailed research on the inside.

Senator Connolly: It has been said that most of the people on the Committee for an Independent Canada are businessmen, and, in response to a question by Senator Beaubien, you said that they believe in the free-enterprise system. The multiplication of agencies in the federal government is one thing you would like to avoid, I am sure. I would suggest that with respect to the recommendation that there should be an authority for research, the existing facilities, and particularly Statistics Canada, if you feel that way, could be beefed up and strengthened to provide this kind of information. But if we go on multiplying agencies for the gathering of information without getting jobs done, we are just going to get further bogged down—and we are pretty well bogged down as it is.

Senator Cook: On that point, do you not think it would be a good idea to postpone the enactment of the legislation until we get this information?

Professor Trent: Senator Connolly, you have named one principle, a principle based on too much bureaucratic control and hampering of business, but I am sure you would accept another principle, that is, that nothing ever gets done in this world unless someone has the responsibility, and a clearly delineated responsibility, for doing it. That is why we would like to see all of this under the roof of one agency concerned with foreign enterprise operating in Canada. That is why we do not think it should be scattered through other agencies.

Senator Connolly: I am not suggesting scattering it but rather concentrating it; but that is a rather minor point.

You make a good deal of the point about foreign control. Certainly, with respect to the word "ownership", there may be a cause and effect relationship to control. I know the word "ownership" does not apply, unless very slightly, in the cultural field, in the social field or in the political field, but in the economic field both the question of control and the question of ownership are important to your thinking, I would gather. Is there a relation of cause and effect between the two terms, in your view or in your submission? Do you want to talk about foreign control primarily, or are you really concerned with foreign ownership?

Professor Trent: We are concerned with both. We should like to see greater Canadian ownership in the long run. We do not think it can be done overnight, but we do think that in a much shorter space of time we can provide for controls over certain aspects of the conduct of foreign enterprise.

Senator Connolly: Of foreign owners?

Professor Trent: Of foreign owners, yes, which will give us much greater benefits in the type of employment and so on.

Senator Connolly: So you are not looking for expropriation.

Professor Trent: No.

Senator Connolly: Or anything like that.

Professor Trent: No.

Senator Connolly: What you suggest—and correct me if I am wrong—is that the Canadian government, if necessary and if Canadians cannot buy the equity of the foreigner in Canadian enterprise, will at least control that ownership and its operations.

Professor Trent: That is right.

Senator Connolly: You also made a point, a big point, about decisions being made in boardrooms abroad, in New York, Washington and other American centres. Would you make the same observations if, for example, those boardroom decisions were being made in London or Hamburg or Paris?

Professor Trent: Or Tokyo. Yes, we certainly would.

Senator Connolly: Do you find anything to complain about in connection with foreign ownership in Canada by companies from other countries as well as the United States?

Mr. Biddell: There is not the same problem in a great many industries, but where you do have a large production facility in, for example, the city of Cleveland and the company involved establishes a branch plant in London, Ontario, for example, then it is much easier for that company to manufacture the major components in Cleveland and ship those across the line, add 5 or 10 per cent in terms of Canadian wage and salary content to them, and then push them out of the door of the London factory as Canadian products.

German companies or English companies, having their major production facilities in those countries, do not have nearly the same ability to do that sort of thing. So we are probably going to get a far greater degree of Canadian wage and salary content right up to the interesting jobs—and that is what we are interested in—in companies that are under the control of European companies, let us say, and even Japanese companies, than we have in companies controlled in the United States.

Senator Connolly: Are we not generalizing a great deal? Let us go back. I will not take more than a moment, but let us go back to the post-war era, 1945. We had an industrial plant established here during the war which could have been a white elephant; but there was a conversion in broad sectors of the economy. However, the converters did not have the facilities—they did not have the capital either, I guess—to provide the production lines that were required for a good many of the products they wanted to turn out. People, for example, turned from gun manufacturing to the manufacturing of domestic appliances—and I know of specific cases, as I am sure you do, when those companies, wholly owned Canadian companies, went to the parts manufacturers and went to the main manufacturers in the United States and had to get from them parts of all kinds and set up their assembly lines here. They started from that and, finally, they got

into the actual manufacture, probably on licence from patent owners and people like that. Do you not agree that in the free-enterprise system these steps have to be carried out in an orderly way to achieve the results you are looking for?

Mr. Biddell: I agree entirely that they have to be carried out in an orderly way, but the pressures are growing now, not only in the board rooms of those companies in the United States particularly, but we see it also in Washington. The DISC proposals are a perfect example of this. Washington is saying to those companies, "We want those jobs in the States; we want those production operations that you have been carrying on in your branch plants in other countries repatriated", and our concern is to influence public opinion and political opinion in Canada that our government should do more than it is doing to counteract what it is quite clear that Washington, Tokyo and London are doing.

Senator Connolly: All right, suppose Washington does repatriate through its laws a good many of these Canadian branch operations...

Senator Cook: That is what the committee wants.

Mr. Biddell: No.

Senator Connolly: No, they don't want that. Let us suppose that Washington repatriates these branch operations and the jobs are exported from Canada...

The Chairman: It creates a situation or it passes a law which makes it advisable for companies operating branch operations or subsidiaries in Canada to repatriate and take their operations back to the States.

Senator Connolly: So what do you do? There is now a vacuum created. What happens?

Professor Trent: You will find in our brief that we tried to stick to the bill, but we did put in a section about what we call "positive legislative measures."

Senator Connolly: That is what I am talking about. What happens in that vacuum?

Mr. Biddell: We think that the federal government should take much more positive counter-measures to avoid that vacuum being created in the first place.

Senator Connolly: All right, what are the tools?

The Chairman: Let us get back to the bill and the three things in it. First of all, the takeover features, do you favour them as they are in the bill or do you object to them?

Professor Trent: We favour them.

Mr. Biddell: We favour them.

The Chairman: You favour them. Now, on the establishment of new business and the provisions we have in relation to that, and the regulation of "significant benefit," do you favour that or do you object to that?

Mr. Biddell: We favour them.

The Chairman: And on unrelated businesses?

Mr. Biddell: Indeed, we favour them, but we would like to see them made stronger and more positive.

The Chairman: Then, are there not vast differences between a takeover transaction and the establishment of a new business in Canada?

Mr. Biddell: Not that great a difference.

The Chairman: Just wait a minute, now. Surely, you can give a better answer than that? If you have a non-eligible person acquiring a Canadian business by takeover, what is there that changes? The physical assets remain here and the money that is paid to the Canadian from the takeover comes in here. Those things do not change.

Mr. Biddell: That is the point, senator. If they do not change, if they are not going to change, and we have measures to see that they do not, then we need not be concerned. But the fact of the matter is that in a great many situations all that those people are interested in when they come in and buy Canadian corporations from their Canadian owners is the market here; and their intention—and they demonstrate it very quickly—is to move the major functions of that fully integrated Canadian business back to their home base. They shut down the R and D department, the engineering department, even the advertising department, and they turn the whole thing into little more than an assembly operation. They ship in the major components; they export the jobs that were available in that Canadian facility.

The Chairman: You do not attach any particular meaning to the words "significant benefit" as being devised to prevent that sort of thing?

Mr. Biddell: Indeed, I do, and that is why we are in favour of this bill.

The Chairman: Then, from what you have been telling me about what happens in takeovers, the bill, in your view, is devised to cover situations of that kind, where it can be established that there is a significant benefit to Canada.

Mr. Biddell: That is quite true.

The Chairman: Then the other question is this: Why should the same determination govern in the establishment of a new business, whether it is of significant benefit to Canada or whether it is of no detriment to Canada? Why should the latter not prevail?

Mr. Biddell: Because of the potential that a foreign controlled operation presently operating here, expanding its activities into a new business, primarily is going to be concerned in taking up the market or a substantial piece of the market that is being enjoyed by a fully integrated Canadian operation; and if their intention is, as so frequently is the case, to get that market and fill it productionwise, engineeringwise, and R and D-wise from the home base back in the States or in Japan, or wherever

it may be, then that is why those new business establishments need to be subject to the same review procedure and control as are the takeovers of existing Canadian businesses.

The Chairman: "Significant benefit" is one thing, whatever "significant" may mean. "No detriment" is a completely different approach.

Mr. Biddell: Well, I could not think of it in more than a matter of degree. You have to establish criteria, and that is why we need the agency that this bill proposes, because there are a lot of people in Industry, Trade and Commerce putting it together as part of their job and using it for their own purposes.

The Chairman: But this agency or board of review is not going to have any decision-making power; it is really a clearing house.

Professor Trent: That is one of the weaknesses that we perceive in it.

Mr. Biddell: Our concern is that in the bill it would appear that it is only going to be a clearing house, and none of us will ever learn what it has been doing or what it has learned.

The Chairman: Then you would favour, I take it, if the minister, in reaching the stage of making a recommendation, published his reasons?

Mr. Biddell: Indeed, I would, Mr. Chairman. I do not want to upstage the Canadian Institute of Chartered Accountants, but I sat on a committee that they have been operating, and this is the recommendation that they are going to come forward with—that unless the criteria are determined, make sense, and are published, and the reasons for the undertakings that are obtained from companies to whom approval is given for new investment are published and made known, then for people who are considering new ventures to know where they are going—there is no body of case law—it will be impractical to require those people who have been given conditional approval to live with and meet the conditions and to know whether or not they are doing it. This is a really serious defect in the bill.

The Chairman: Then, if you go that far with me that the reasons should be published, I would think that you must inevitably take the next step—that is, that the person who may be hurt by those reasons should have the right to challenge them by appeal.

Professor Trent: Senator, in my opinion there are two points...

Senator Connolly: Let us continue discussing the question of appeal, which is very important in this context. If a body of law is to be built up providing for reasons, given by the minister in this case, which may disaffect someone, as the Chairman pointed out, or perhaps would be self-evidently unsound and contrary to fact, should there be recourse by whoever is disaffected?

Mr. Biddell: I was under the impression on the one side that the applicant does have the right of appeal and dialogue to put forth his case. I do not know whether there is a specific right of appeal to the minister.

The Chairman: No right of appeal is provided in the bill. The minister does not publish his reasons for his recommendation.

Mr. Biddell: In my opinion, that is quite wrong, the reasons should be published. The Canadian Institute of Chartered Accountants also believe this.

The Chairman: Then the next step would be inevitable. If it appears from consideration of the reasons that the minister has departed from the factors he must follow, there should be provision to challenge his recommendation.

Mr. Biddell: This is true, but my great concern, Mr. Chairman, is that every business in Canada has competitors. The decisions which will be made in those instances are vital and it is likely that there will be major new industries involved. An entire project cannot be held up indefinitely to give competitors the opportunity to appeal and block a major enterprise. Many instances would occur in which this would be done for completely selfish and capricious reasons.

The Chairman: I am glad to hear you arguing on the side of the foreign investor, because the subject matter of the minister's study will be whether a take-over bid of a foreign investor is of significant benefit to Canada.

Mr. Biddell: That is correct.

The Chairman: So you are arguing in the interest of the foreign investor that he should be allowed to proceed as quickly as possible.

Mr. Biddell: If his project is determined, using reasonable standards, to be of significant long-term benefit to Canada, he should be entitled to do so.

The Chairman: Then, whether the board room is located in New York, Washington or Timbuktu, if an attempt to take over a Canadian business is of significant benefit to Canada, all other factors should be forgotten and anything which might block or slow down its progress taken out of the way in order that it may be accomplished as quickly as possible.

Mr. Biddell: No, because there is more involved in determining "significant benefit to Canada". Presumably, and hopefully, the minister would require positive undertakings as to how an applicant organization would carry on its Canadian operation in the future. The consideration in determining whether the operations would be of significant benefit to Canada should be the manner in which the company intends to operate. The plans of operation should be published, in order that the company can be forced to live within what is agreed to do.

The Chairman: Is to ensure that they will honour their undertakings the real justification? That is some-

thing that will happen after the event. We are discussing rights which might be trampled upon when the minister gives his reasons.

Mr. Biddell: The rights which may be trampled upon are on two sides. The legitimate rights of an entrepreneur who wishes to establish a business in Canada, whether he happens to reside in the States or in Tokyo, should be considered. Those who operate a similar business in this country and do not desire to see the entry of a competitor also have rights.

Senator Cook: Does the Canadian businessman who wishes to sell his business have no rights?

Mr. Biddell: Indeed he has rights. Opportunities exist which should be seized by our governments, both federal and provincial, which could materially assist the Canadian businessman in establishing a business. He is there all alone, vulnerable to succession duties and all the vicissitudes that can affect a business. I live in this world, professionally speaking, and know that most sell-outs are engendered through fear, rather than greed. A much better financial apparatus in this country could eliminate that fear and make it possible for the businessman to get something out of it.

Senator Connolly: Fear of what—succession duties?

Mr. Biddell: Not particularly, but consider a man who starts from scratch and builds up a business on his own and pours every cent he can scrape up into it. All it represents to him is the power to run it, but he has no money to spend on himself. He inevitably reaches a stage in his life at which he wishes to get something out of the business that he knows he can fall back on. It is practically impossible to sell a minority share interest in a company under today's financial apparatus in Canada. Governments, both federal and provincial, could contribute a great deal to the improvement of the climate, thus avoiding such sell-outs as have occurred in the past.

The Chairman: Mr. Biddell, an actual case was recounted to us recently of a businessman who did just what you describe, only he controlled the business. He decided finally that he wished to put his estate in order so he invited bids, which he received from Canadian and American interests. The difference between the two was in the order of \$2 million or \$2.5 million in favour of the American over the Canadian bid. Under this legislation, however, he might very well not be able to accept the American take-over bid.

Senator Cook: The point is that he would have no right of appeal if the agency decided that it was quite sufficient for him to be paid \$2 million from the Canadian bidder, thus keeping the business in Canada, although he has the opportunity to obtain \$5 million from the American bidder. That gentleman is one of us and has no right of appeal but must follow the instructions of the agency. Do you think that is right?

Senator Connolly: In arguing with you in this manner we are not doing so against your proposition, which we are not discussing at the moment. We simply ask you

whether, in your opinion, a decision by the minister which might disaffect a Canadian, or an American, or other foreigner, should be subject to redress or should simply be taken as final.

Senator Beaubien: And take \$2 million rather than \$5 million.

Mr. Biddell: The basis of the appeal, senator, might be that the American will pay more than the Canadian, so the provisions of the bill are discarded. I do not think that the Canadian businessman is entitled to that. There is a greater long-term need for Canadians than just giving a man more money.

Senator Connolly: It cannot be limited to that; this is a broader consideration.

Senator Cook: It is a new form of taxation.

Senator Connolly: Do you think there should be a right of appeal against the minister, whether for or against a Canadian?

The Chairman: Senator Connolly, you will recall that the case to which I referred was that of an Ottawa manufacturer who received a Canadian bid for \$2 million and an American bid for \$5 million. Under the provisions of this bill the minister must be satisfied that the takeover by the American bidder would be of significant benefit to Canada, rather than of significant benefit to the seller of the interest. This man has spent a lifetime building up an operation which has been appraised somewhere in the world as having a value of \$5 million, yet you favour a situation in which he could not ascertain the reasons of the minister for refusal to allow the consummation of the deal.

Senator Cook: Another factor involved in the same case was that the man was middle-aged and in order to stay competitive and continue to expand faced the necessity to raise \$1 million for the business. He is approaching 50, or is perhaps over 50. He has different choices. One is to raise \$1 million in order to stay in business, be competitive and expand and take care of his business. His advisers told him that the best thing he could do was drop dead. He would then not have to pay death duties, and so on. Assuming he did not elect to drop dead, he would have the choice of raising \$1 million, or, to clear a lot of his worries, to sell out. If some civil servant says it is better for this to stay Canadian, has that man absolutely no recourse?

Mr. Biddell: There should be machinery that will provide him with a better recourse. That is what I was referring to when I said there should be better financial agencies sponsored by the various levels of government that would give him another alternative. But you cannot just answer the question, "Should there be a right of appeal or should there not?" yes or no.

Hon. Senators: Why not?

Senator Connolly: You are a businessman. Isn't it a lot more concrete to have a right of appeal than to be

looking for some vague place, either under federal or provincial jurisdiction, from which some kind of financial help is going to be provided for this man? How long would it take to get a program like that established, agreed to, and working, from a practical point of view?

Senator Beaubien: Who would run the business? Who would be the owners? Are you suggesting that the federal government buy the business?

Mr. Biddell: I do not want to take up the time of the committee with my personal views on the establishment of a small business investment corporation in Canada. I feel very strongly on that score. I have made representations to the Department of Finance. It is that sort of thing that I am talking about, and of the Industrial Development Bank. But I do not want to get into that detail here. I would want to oppose very strongly—and I am sure our committee would—that merely because the owner of that business says to a judge, if a right of appeal is given, "I can get more money from buyers in the States who are going to emasculate my company, but that does not concern me any more; I will get more money," that that should not be the basis on which a successful appeal can be made.

Senator Connolly: It happened that the example illustrated that. But the right of appeal, you can see, is a much broader proposition than simply the rectification of a situation where you get a few extra dollars.

The Chairman: You are establishing a closed market in Canada for Canadians to buy Canadian businesses at a much cheaper price than you can realize from the same business from non-Canadian sources.

Mr. Biddell: What we are saying, and what this bill is implying, is that the Canadian people as a whole have an interest in the economy of Canada rather than specific individuals who happen to own a piece of it and want to get the most out of it.

Senator Cook: But they have rights. Take the Department of National Revenue. I think we all agree that they are a most reasonable and conscientious bunch of civil servants.

Mr. Biddell: Most of the time.

Senator Cook: Yes, most of the time. Do you think there would be a tendency for many of them to be a good deal more arbitrary and difficult to get along with if there were no such animal as the Income Tax Appeal Board?

Professor Trent: There is a very difficult problem here. The decision on a takeover is going to be made by the highest authority in the land: not just by the minister, but by the cabinet. This is going to make the appeal situation difficult.

Senator Cook: Do you know how many individual cabinet ministers there are?

The Chairman: Perhaps we could expand on the thoughts we may have on an appeal. We are talking

about an appeal at the stage when the minister arrives at his reasons. We are not talking about the decision of the Governor in Council, which comes at the end of the road on the recommendation of the minister.

Senator Flynn: Which need not be in accordance with the recommendation of the minister.

The Chairman: That is right.

Mr. Biddell: If the persons who had the right to appeal were limited to the owners who are going to sell, I would agree with you. But if you are going to make the right of appeal available to anyone, including a prospective competitor in the business, who would not like to see that business come into Canada...

The Chairman: We have not suggested that.

Mr. Biddell: But I cannot make a comment, yes or no, unless I have some idea of what is in your mind.

Senator Flynn: You have to be a party to the problem.

Mr. Biddell: I do not like to express an opinion if I do not know the ground rules.

The Chairman: The reasons given are in relation to the situation affecting certain people. Within that area a person who is adversely affected by a decision has a right to know; and you agree that the reasons should be published. If the reasons are published and they do not, in the opinion of this business, conform to the factors that are exclusive, as far as the minister is concerned, then he should be able to challenge that.

Mr. Biddell: I agree.

The Chairman: The only way you can do that is by establishing an appeal. We have been talking in terms of an appeal to the Federal Court and possibly the appeal section of the Federal Court.

Mr. Biddell: I view that with a great deal of concern, because you are dealing with a business as a going concern. The senator here referred to one example of a gentleman who was faced with finding \$1 million to expand his business and to keep it going, or to sell it. If you are going to introduce an appeal procedure to the courts, we are all aware that the mills of justice can grind exceedingly slow, particularly if the parties want them to.

The Chairman: But that is easily dealt with: you can put a time limit on.

Mr. Biddell: Yes, you can put a time limit on, but it can be in the courts for months or years.

The Chairman: A time limit on when a decision should be made.

Mr. Biddell: I have tried that same sort of thing in my field, because it makes a great deal of sense. The court must hand down a decision. But I have always run into a great problem. There is no way the courts are going to be dictated to as to when they are going to hand

down their decision, and there is no way that the solicitors for the various parties are going to be dictated to.

The Chairman: If the statute lays down the law, then that is it.

Mr. Biddell: If it were possible for the statute to say that the court must hand down its decision within a limited time, and the court must do it, then that is fine. That is something I have always been concerned about.

Senator Connolly: Surely, you cannot say that because there are delays in connection with appeals that therefore appeals should be abolished? Surely, our system of justice here calls for a thorough review if required, and if rights are violated in the first or second instance, there could be an appeal to a third level. These things, surely, are part of our system that we, and you people, want to see abolished here?

Senator Cook: Plus the fact that if there is a right of appeal, the person or persons administering the act, over a period of time, are going to be a great deal more careful in administering the act than they would if they had the last word without any appeal.

Mr. Biddell: A combination of having to establish their criteria, their decisions and undertakings they abstract in arriving at their decisions, and a right of appeal, does not permit the thing to be killed just because they delay. It is that latter factor that concerns me.

Senator Flynn: It is difficult to imagine any case where a positive recommendation would be appealed. It is only if the minister does not approve a case.

Mr. Biddell: That requires exceeding care as to who has the right of appeal.

Senator Connolly: There is nobody else before the court: it is the court against the Crown; it is the applicant against the minister.

Senator Cook: You cannot have nuisance actions.

Senator Connolly: In fact, it is not the minister. You will admit, too, that a decision of this kind is not going to be the minister's decision; it is going to come up from somewhere down below. What we are really looking to here is an appeal against a bureaucratic decision.

Senator Cook: This act creates what I call a commercial star chamber.

Mr. Biddell: I thought of that term in connection with this too. I agree with what you are proposing, as long as it is limited strictly to an appeal by the applicant. For goodness sakes, I hope we can avoid the extension of any right to appeal to someone who can claim he has an interest. If we do that, then the whole thing dissolves.

Senator Flynn: You cannot institute an appeal from a decision of the Minister of National Revenue concerning someone else simply because you would like him to pay more income tax in order to get rid of him.

Professor Trent: We go a little further with respect to the publishing aspect by requesting that it be stated in the bill that the minister be responsible annually for making a report and publishing his reasons with respect to those applications he accepted and those he refused. I think this would be a very good tool in putting into action such a bill.

Senator Connolly: I do not think the minister should be required to give his reasons on every specific case. I do not think anybody objects to a report being made to Parliament. However, reports to Parliament are pretty *pro forma* things. The important place, the practical place, to get the reasons behind the decision would be in connection with specific decisions.

Professor Trent: That is true, senator, with one exception. Those probably will not be published. They will be made known to the participants, but they will not be published.

Senator Trent: Why not?

Professor Trent: Because of the effect it would have on, first of all, the government's negotiating position and, secondly, the negotiating position and the business position of those who want to come in. I do not think those people would want this whole thing published all over. Also, the difficulties of simply administering afterwards the foofaraw that this would bring up at the time this decision is to be made, if each decision was published in the public domain.

Senator Connolly: Well, what good is publication at all if it does not go into the public domain? That is what you argued for a moment ago.

Mr. Biddell: I will take issue with Professor Trent on that score. The Canadian Institute of Chartered Accountants are submitting a brief which says that every decision should be published so that a body of case law can be established.

Professor Trent: Published before or at the moment the decision is made?

Mr. Biddell: Published when the decision is made. The reasons for the decision, as well, as any undertakings given by the applicant, should be published.

Senator Cook: Once the final decision is made?

Mr. Biddell: Yes.

The Chairman: I think we have gotten everything possible out of that.

Do you have any comments with respect to the 90 days allowed to the minister within which he will make his decision? Do you not feel that that is too long a period?

Mr. Biddell: Personally, I believe it is too long. I do not think that much time is required.

The Chairman: The suggestion from the Province of Ontario was that it should be 45 days. Some of the committee members have been talking in terms of 30

days. The minister, of course, at the end of the 30-day period could make a request for further information, allowing a certain period of time for such information to be provided, which would give the minister a further 30 days in which to make his decision.

Mr. Biddell: It really gives the minister an opportunity to expand, within reason, the period in which he is to make his decision.

The Chairman: Yes.

Mr. Biddell: I think that would be quite satisfactory.

Senator Connolly: Mr. Chairman, as you will remember, we asked officials of the Department of National Revenue how long it takes to get a ruling which you can apply for now upon payment of a fee, and the answer was approximately two months. That could be on quite a narrow point too, and it still takes two months.

The Chairman: The officials from the Province of Ontario suggested that there be a procedure by which one could apply in advance for a ruling. They also thought that there should be a right of appeal with respect to that decision—in other words, one could get a quick ruling.

Senator Flynn: It is a question of a summary procedure with respect to some cases.

Senator Connolly: They use the term "summary procedure." We have talked about the possibility of an application for a ruling. However, it comes to the same thing.

Senator Cook: I believe that was qualified, was it not, with respect to whether you were an eligible or a non-eligible person?

Senator Flynn: Yes.

Senator Connolly: I do not think we thought that through. Perhaps rulings should be applied for, or could be applied for, in respect of other reasons too. I, for one, have not thought it through completely.

Senator Cook: But I believe there was some limitation.

Senator Flynn: That was one of their points.

The Chairman: This is just an observation, Mr. Biddell, but it is very interesting, from the point of view of the organization which you represent, that we are getting as much in the way of concession on behalf of non-eligible persons. When we talk about right of appeal, and so forth, it almost invariably concerns non-eligible persons.

Mr. Biddell: Mr. Chairman, I was going to make about a four-minute statement which, I think, would have amplified—

The Chairman: One question before you do so. The officials from the Province of Ontario suggested that the 5 per cent provision in the bill, respecting the holdings that you may have in a non-resident person, be changed to 10 per cent in order to coincide with their security laws.

Mr. Biddell: I have not made a detailed study of this. I do have a strong personal impression that the 5 per cent is too low.

Senator Cook: If it were 10 per cent it would bring it in line with numerous other acts and regulations.

Mr. Biddell: Yes.

Senator Cook: I think we all agree that acts should have the same percentages and not one percentage rate for one purpose and another percentage rate for another purpose.

The Chairman: Yes. Now, then, I think I have eliminated some of the questions with which we are concerned. There is one more question. We will get to your reading of the statement, Mr. Biddell.

Mr. Biddell: That is quite all right, I really do not need to read it.

The Chairman: There is the problem of validity of this legislation and the possible conflict or confrontation between the provincial and federal authorities. Some provinces have already said that they wanted no part of it. The Maritime provinces have taken that position.

Clause 2(2)(e) of the bill sets out one of the factors the minister has to take into consideration in those circumstances, that being the compatibility of the acquisition or establishment with national industrial and economic policies. Clause 2(2)(e) goes on to say:

...taking into consideration industrial and economic policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the acquisition or establishment.

If we start off with the premise that the Maritime provinces refuse to accept this and they get an offer of an infusion of money from a non-eligible person, which will be of great economic value to the Maritime provinces, where is the blow-up going to occur? Should there not be some modification of this subclause in order to avoid that type of situation?

Mr. Biddell: I would have thought that in the normal course the political process would take care of that. I find it difficult to conceive of the federal minister in the federal cabinet turning down an application by a foreigner to set up a plant in Cape Breton Island, which, obviously, no one in Canada is prepared to set up, which plant will provide significant and worth while employment for Cape Breton Island. I just cannot conceive of the federal government refusing such an application.

The Chairman: Of course, you are picking the best case you can think of.

Senator Cook: What about the province of Newfoundland?

Mr. Biddell: We need a great deal of it there also. I could have picked an even better case in Newfoundland.

Senator Buckwold: Could I ask a supplementary in that regard? What if it involved a natural resource, which

you seem to be very concerned about? Would you have the same feeling if that were the case?

Mr. Biddell: Hopefully, we are going to get a natural resource and energy policy as part of an economic strategy which, surely to God, we need, and, within the limits of that .

Senator Buckwold: But it could be any kind of natural resource. I am not referring to energy specifically. Again, you are waffling—and I do not use that term in the political sense—in your answer. You have said that you cannot imagine any government turning down for the province of Newfoundland or Cape Breton, or Saskatchewan, where I come from, any foreign industry that would come in and create employment. However, when I asked you if you would have the same views if it involved a natural resource, you hesitated a little.

Professor Trent: But there is going to be hesitation, is there not, in putting into operation these guidelines? There have already been produced by a number of economists in Canada weighted guidelines that would take into consideration the area of the country, whether it was manufacturing or resources, whether or not it would produce a lot of employment or not very much employment, and many other factors, and ways of weighting this.

Senator Buckwold: Did you qualify that when you gave your first answer?

Professor Trent: I think Mr. Biddell did qualify it, saying that within a Canadian energy-resources policy we would presume that this type of investment would have a lower priority.

Senator Buckwold: I think the chairman has raised a point that many of us are very concerned about. I think most of the committee have some sympathy for the kind of things you are talking about. I do not know whether they would go to the extremes you would wish to go to. I come from Saskatchewan, which needs development capital; it is an under-developed area, and certainly an under-populated and under-employed area. In reading your brief in fairly close detail, I have not been able to find anything in it that would do the least bit of good in helping change the regional disparity that we have in Canada, which is a national problem. Don't tell me that the Canadian Development Corporation is going to do it, or that the extension of regional economic expansion opportunities or DREE will do it. We have been trying that for a long time. In the end everything seems to settle in the more industrialized market places of, say, Ontario and Quebec.

Professor Trent: Our statistics and the Government of Canada statistics seem to indicate that foreign enterprise has concentrated—I am not saying that the record of Canadian enterprise is any better—in Ontario; that is where the greatest foreign enterprise is. One of the things we would like to see the government have is the negotiating ability of saying to a company, "You want to establish a manufacturing plant. You would be more likely

to get our approval if it was established in Saskatchewan," or Newfoundland and so on.

Senator Buckwold: You are saying, then, you have no objection to foreign investment as long as it is not in the highly industrialized areas that already have foreign investment?

Professor Trent: I think that would exaggerate what I am saying.

Senator Buckwold: You said it, and I am glad to hear it.

The Chairman: Do you think it exaggerates it?

Professor Trent: Yes, it does exaggerate what we are saying.

The Chairman: I would not have thought so.

Professor Trent: That was not the intent.

Senator Buckwold: Do you think Ontario would be happy to hear this kind of discussion?

The Chairman: You know, that is a loaded question, because we had Ontario before us.

Senator Buckwold: I know.

The Chairman: Ontario said that one of the elements must be that the province, and only the province, must be able to articulate the industrial and economic objectives in relation to the location of any industry in that province. They say it because they think the bill is designed to assist, to recognize and to help the regional disparities.

Professor Trent: I believe the minister has tried to say, "No, no, no" on about ten occasions, that this is not the objective.

The Chairman: I know what "no" means. It is just an expression of his opinion, but it is not worth any more than the reasons.

Senator Smith: I have a very strong feeling that what Mr. McKeough said about regional development was that he did not agree that a bill in any such form should be used as an instrument of regional development. I thought that was a pretty disappointing statement for us from the east to hear. I thought it should be one of the instruments.

The Chairman: In the hands of the federal authority?

Senator Smith: If the bill went through it should be one of the instruments of government policy, for the review board to say "yes" in one circumstance and to say "no" in another. I think that is what the witness has now said. He is not saying something that Mr. McKeough said.

Professor Trent: What we are saying is simply this. We understand that it is not the basic intent that the minister and the department should use this bill for redistribution.

We think, in practice, it would tend to be so, because the province would put on that sort of pressure, or make that sort of request, or the federal government would find it more in its interests to direct manufacturing, or whatever it is.

Senator Buckwold: You went further than that and said you would support that.

The Chairman: Senator Smith, we are not discussing "to be or not to be"; what we are discussing at this moment is the extent of the voice that the particular province should have, and how effective that voice should be made in the determination of the location of an industry.

Senator Cook: And what would result is disharmony.

The Chairman: If New Brunswick wants to use foreign money to establish an industry...

Senator Flynn: Why not leave to the province the responsibility of dealing with this takeover problem? After all, I think we have evidence to the effect that it is within the jurisdiction of the provincial legislature. We have even had an official of the Department of Justice say this bill could be enacted by any legislature and would be valid. Why not leave it to the provinces?

Professor Trent: This is one of the things we feel most strongly about. We feel that any new investment, be it foreign or Canadian, can always find some supporters to say that it is of significant benefit. If it creates one new job it is of significant benefit. What we are worried about is the composite picture for all of Canada. At this level it is much easier to see the dangers, in a composite picture rather than the individual takeover of one company. This is why we feel it is necessary to have strong federal leadership in this area.

Senator Flynn: If it takes into account the provincial views.

Professor Trent: Yes. We are unfortunately upstaged by the minister. We had intended to say in our brief that we feel there should be a permanent provincial consultative body in connection with the review agency. He has already adopted this proposal. We think it should be extended beyond just provinces. We feel that the permanent consultative body should have interested individuals, experienced specialists and so on, as well as the provinces.

Senator Flynn: You realize that the policies of the provinces vary from one year to another, and from one government to another. Senator Buckwold spoke of Saskatchewan. If my memory serves me aright, the previous Liberal administration of Saskatchewan had arranged for the establishment of a newsprint mill in the north of Saskatchewan, and I think we passed a bill here for that purpose. There was then a change of administration and the project had to be abandoned because the new administration changed the policy. I do not know how you would be able to reconcile all these variations.

Professor Trent: I believe that's politics, isn't it?

Senator Flynn: This bill can mean something today and something else tomorrow. You do not know where you are going. It gives a tremendous tool to any government to regulate a lot of things as it wishes.

Senator Cook: We had a very distinguished witness here who told us he had served for some time in the Indian civil service.

The Chairman: He said he had been a civil servant in the United Kingdom service; he was a civil servant in the Indian service; he was a civil servant in the Canadian service; and he said he would not take their opinion on any business matter.

Senator Cook: I think he said he would not trust them to administer this bill.

Professor Trent: Perhaps I could add one thing. We feel that this is a difficult aspect of the bill. What is needed is much more channelling of the available funds in Canada for investment in positive measures by the government, rather than trying to handle that problem within this bill. We are much more concerned to see the provincial question taken care of. We have heard of really quite small sums of money that Premier Hatfield is interested in getting in New Brunswick. This money is to be found in Canada, but it is not being found in Canada. As Mr. Twaites said a couple of weeks ago, his company was able to raise \$200 to \$300 million on the capital market of Canada during the last two or three years. That is where the money is going, into these big corporations and to finance their international growth, from the Canadian money market. Our committee is very concerned that there be new forms and mechanisms used for channelling the available savings of Canadians into development in all regions of Canada, rather than just having it go to finance the international corporations—which, of course, have a better credit record.

The Chairman: Wait a minute, Professor Trent. There is a distinct conflict or contradiction in what you are saying about my suggestion. If you take a non-resident operation in Canada that is earning the kind of money that you talk about, and earning it here in Canada, and it has that money available, the benefit of that money goes, to a substantial extent, to the people who make these earnings possible. There is employment, there is increased purchasing power in Canada, from that money. You are only looking at the portion of it that goes from Canada to the United States by way of dividends or interest, I take it. Is that right?

Professor Trent: Plus management fees, transfer payments, royalties and so on.

The Chairman: After all, if you get money, you have to pay for it, wherever you get it.

Senator Flynn: You would have to pay these things, even if you were a Canadian corporation.

The Chairman: Professor Trent is flying in the face of some pronouncements by a very distinguished mem-

ber of his Committee who one was the Minister of Finance.

Senator Cook: Guess who!

The Chairman: I mean, once upon a time. He favoured debt money coming into Canada whatever the source might be. So when we are talking about money being paid out of Canada in the operation of industry in Canada owned by foreigners we should really exclude interest payments. Certain legislative action was taken by the then Minister of Finance back in the early 1960s in order to permit exactly that situation, because it was a debt obligation rather than a dividend. Whatever amounts of money you are talking about moving from non-resident owned companies in Canada, moving to their owners in the United States, surely you must exclude interest payments?

Professor Trent: No, obviously not, senator; you cannot exclude interest payments on investments duly made. What we are worried about is loans—loans capital taken from the Canadian savings and used to finance the take-over of the Canadian economy to a greater extent by these foreign corporations, what we call paying for our own sell-out. We are also interested in trying to use these savings in Canada so that the dividends eventually will be in Canadian corporations and will be coming back to Canadians. I do not think that some of the provincial premiers have seen this on a long-term basis, that the statistics are proving that we are paying out much more now than we are getting in in the foreign capital in benefits. This is one of the things we are trying to draw attention to.

The Chairman: If I might suggest, professor, there is a very impracticable plank you are making there. Canada must have exports in order to live and maintain the kind and standard of living we have in Canada today. Many of our Canadian companies, multinational companies, are in that market, the export market. To the extent that foreign investment operating industry in Canada produces goods for export, they are contributing to the economic benefit of Canada.

Professor Trent: We do not deny that, senator.

The Chairman: Then, where does that get us? I am trying to whittle away at your proposition, and the eliminator seems to eliminate so many things I am wondering where we finally arrive at. What part of the money that is earned in Canada by a non-resident owned company is bad, whereas some part of it, that produces purchasing power in Canada and that produces goods for export, is good for Canada? The part that you say is bad is the moment you want to pay a dividend to the person who organizes the money that makes that possible?

Mr. Biddell: Mr. Chairman, Professor Trent did not say that. I think he was referring to the money that is taken out of the savings of Canadians, savings that are available for investment, by the large corporations for their major projects, many of which are to buy up Canadian corporations and many of which are to finance their

international operations. When the foreign companies come up here, they can get very large loans from our banks, because they have an excellent credit rating and it is much easier for the banker—I am not now being critical of the banks—to make one loan of \$25 million than 500 smaller loans. They can get the same rate of interest and the repayment is undoubted. We have a very large sum being taken out of the savings of Canadian by the large foreign corporations and the purpose of that money is not going, to the extent it should, in creating worthwhile profitable employment for Canadians.

Senator Cook: Assuming that is so, what are you going to do about it?

The Chairman: May I point out, Mr. Biddell, that Mr. Gray's report, at page 9, has one sentence, a conclusion he has in a paragraph entitled "Savings of Foreign Controlled Firms Resident in Canada." As a conclusion, he states this:

Thus, while Canada has recently become much less dependent on savings from non-resident sources, a large part of domestic savings are generated by foreign controlled firms in this country.

You seem to be assuming, in what you are saying, that the accumulated savings in Canadian banks are Canadian moneys saved by the Canadian people. Mr. Gray does not say that.

Mr. Biddell: I do not think he denies it, in that statement.

The Chairman: I just read it. It speaks for itself.

Mr. Biddell: I think his statement could just as easily be read to mean that foreign controlled companies in Canada employ a lot of people, they pay a lot of wages and salaries and their savings go into Canadian banks. Sure, they employ a lot of people, just as they control so much of our economy.

Senator Cook: Assuming you are right, that a lot of our savings from savings accounts, life insurance, interest, pension funds and so on, do find their way into the hands of big corporations through the purchase of securities by those foreigners, what is your solution to that problem?

Mr. Biddell: I referred to it briefly and, again, I do not want to get into a detailed discussion. The idea, the principle of the small business investment corporation sponsored by government, on federal and provincial levels, is one of the best ways to do it, and we can demonstrate that, and at any other time we will be delighted to do so.

Senator Bulkwoold: According to your brief, you make a statement on page 7, that "over the past decade Canada has been paying out far more money in dividends, royalties, transfer payments and management fees etc. than it has been gaining in new investment capital." I am not questioning that, but I would like to know the

source. I would like to know where you got those figures, and I wonder if the committee might be given that information.

Professor Trent: The best thing for me to say would be that, certainly, we will provide that information, on the source of those statistics. They come mainly from the United States Chamber of Commerce.

Senator Buckwoold: The other thing you say is that, "In fact, in some fields of investment, foreign investors have been able to recoup almost three-quarters of their investment within the first year." Could you give me the names of those companies you are referring to?

Professor Trent: These are mainly the resource and the oil concerns. I cannot tell you the names of the exact concerns, but we can provide those to you as well.

The Chairman: I should think that if we are going to summarize what Professor Trent has been saying, it might be this, that he is not opposed to foreign investment in Canada if it is established that it is of significant benefit to Canada. Therefore, they are not opposed to foreign investment in Canada per se. Is that right?

Professor Trent: That is right.

The Chairman: So, then, there is not a curse being put on all foreign money. It is only on the money that is not going to be useful to Canada. I find it difficult to accept that people from outside Canada would invest money in Canada unless it were going to be usefully employed for their benefit, which would also be for Canada's benefit.

Mr. Biddell may want to answer that.

Mr. Biddell: There are very definite circumstances under which that investment by a foreign corporation will not be of significant benefit to Canada, and that is why we need this bill.

The Chairman: I was referring to the essence of your philosophy; I was not discussing the need or lack of need for the bill. As a matter of fact, I was proceeding on the basis of the language of the bill, and the bill is not against foreign investment in Canada. Judging from your presentation and your answers here, you are not against foreign investment in Canada either. Therefore, you recognize the need for foreign investment in Canada, but what you say is that it must show itself to have a significant benefit for Canada.

Mr. Biddell: Indeed.

Professor Trent: We go further than that, Mr. Chairman. We say two other things. One is that we would need much less than we are currently taking in, if we were to redistribute and rechannel the funds that are available and help to build enterprise in Canada; we would be much less dependent on this foreign investment.

Senator Flynn: You need less?

Professor Trent: We need less, yes. We do not believe we need the current levels of foreign investment being

brought in, and we also believe that there are other ways of bringing in foreign investment—for example, non-equity.

Senator Flynn: But foreign ownership in Canada is less today than it was 25 years ago.

Professor Trent: The magnitude of foreign investment? No, sir! It is much higher.

Senator Flynn: Are you speaking of U.S. ownership or other foreign ownership? Have you any statistics on that, because I am curious? I doubt it very much. It seems to me that after the war we bought back many Canadian companies which were foreign-controlled.

Senator Beaubien: Senator Flynn, we had no oil industry in Canada before the war. It all came in after the war and it was all foreign; and we would still have no oil industry in Canada if they had not come in. We did not produce oil before 1947.

Now, Mr. Trent, could you tell me what yardstick you use to judge whether a company is foreign-controlled or not? Are you talking of, for example, C.P.R. as being a foreign-controlled company, or International Nickel and many of the other big corporations with respect to which it is hard to establish who actually has the share control? What yardstick are you using? If you call those companies foreign-controlled, it makes a tremendous difference to the statistics.

Professor Trent: That is true. We generally accept the guidelines that are set down on this in the bill itself at the present time, the 25 per cent and 40 per cent figures of shares in the two different situations.

Senator Beaubien: In my opinion, the 25 per cent figure makes absolutely no sense. The bill says that, if it is obvious that no one group has control, then it is deemed that the directors control the company. Well, there is no question that C.P.R. started as a purely Canadian company, was financed only by debt capital to begin with and has been nothing but a completely Canadian-controlled company for over 100 years. It is a Canadian company. If you can get anything more Canadian than C.P.R., it would be very hard to find. Not only that, but C.P.R. owns about 10 per cent of Canada. It is fine to sit down and have all kinds of figures and yardsticks, but don't tell me that C.P.R., which has tremendous controls in oil, puts out a lot of coal, controls a big pulp company, owns a tremendous amount of land and has over 35,000 miles of railway—don't tell me that that is a foreign-controlled company. But your statistics are based on that sort of thing.

Mr. Biddell: Just as a facet of that, Senator Beaubien, I am personally just as concerned about a Canadian-controlled company which would set up operations here in Canada and then decide that it would make more economic sense to transfer most of its better jobs and most of its production down to the United States. I am just as concerned about that type of corporation.

Senator Flynn: Do you want to do something about that?

Senator Beaubien: Mr. Biddell, you told us, to begin with, that all you would have to do to have control would be to reduce taxes.

Mr. Biddell: That is right, but what we are trying to get at in the committee is to go back to the basics here, the quality of life in this country. That means worthwhile employment opportunities, and that is what we are working towards. We are really working towards a sensible, long-term economic policy for this country, and it is going to require the review of not just foreign controlled companies, as are technically defined in this or any other bill, although that is a good start, but it is going to have to extend to the multinational corporations, generally, in order to see how those corporations are directing this economy.

The basic principle of government, so far as I am concerned, and the basic purpose of government, is to tell the businessman what he must not do that would be detrimental in the long term to Canada. That is the basic job of government, in my view, and it needs to be exercised in the economic field as well as in the social field.

Senator Beaubien: How is government going to know what is going to be good for Canada?

Mr. Biddell: That is the point. This bill is a start for government to find out, and I think that its chief advantage is the setting up of this review agency so that we will get in one place, in a group which is interested in this problem, information on what the companies are doing, because without that we will never develop a sensible, long-term, economic policy for this country. We do not have one now. Any policy we have is made for us in Washington. That is why we are interested in this bill.

Senator Flynn: With this bill we are not doing anything about Canadian companies investing outside Canada.

Mr. Biddell: No, I agree we are not; but I look to the future.

Senator Flynn: Would you want to have some machinery to prevent Canadian companies or individuals from investing outside Canada?

Mr. Biddell: Not to prevent them; but I would certainly like to see some machinery that is going to persuade them that they would be better off, and we would all be better off, if they stayed here.

The Chairman: You are talking about business incentives?

Mr. Biddell: Yes, indeed I am.

Senator Connolly: Well, Mr. Biddell, our Standing Senate Committee on Foreign Affairs is terribly interested in the development of events in the European Community. One of its very strong recommendations, as I understand, will be that Canadian business should make investments over there, become part of that community and get into

the multinational corporation field and expand and develop in that way. Are you against that?

Mr. Biddell: Again, it comes back to fundamentals. If that expansion is going to result in their rationalizing production offshore and exporting Canadian jobs, I am very much against it. That is the sort of thing which the government has to concern itself with, react to and with respect to which it has to provide incentives to see that it does not happen.

The Chairman: You are advocating, Mr. Biddell, a duplicate of the Burke-Hartke legislation which is before the Congress of the United States now.

Mr. Biddell: I am sympathetic with its spirit, but I do not believe you can legislate that sort of thing. You have to provide the incentives. We are free-enterprises, after all.

The Chairman: They have gone so far as to prevent the export of know-how and patents. The only thing that would happen to an American who had patents and could not export them would be that everybody elsewhere in the world would. . .

Mr. Biddell: Steal them.

The Chairman: . . . would exploit them without any risk.

Mr. Biddell: Well, I could not agree with the Burke-Hartke bill at all.

The Chairman: Now, have we assumed what at one stage you wanted to read, or would you still like to read it?

Mr. Biddell: I think we have, because basically I wanted to set out where our interests really lie in foreign investment, and our concern for the development of a sensible, long-term economic policy for Canada, and how we saw the review agency, as proposed in this bill, as being a very important first step in that direction. I have some copies of my statement here that I should like to leave with you, but I do not feel I should burden the members of the committee by reading it into the record at this stage.

The Chairman: You know the review agency is described in clause 7 of the bill with its purpose being given as, "to advise and assist the Minister in connection with the administration of this Act." To me this is an extra special reason why any recommendation or decision of the minister and his reasons therefor should be published and should be subject to appeal.

Mr. Biddell: Well, I would agree with that, Mr. Chairman, because we want to know that that review agency is doing a worthwhile job.

The Chairman: And the only way we can get at it is through the minister, because he is the one they are ad-

vising, and he is the one that recommends yes or no to the Governor in Council.

Mr. Biddell: That is right, and we want the minister to appoint a dynamic person to head up that review agency; and we, as members of the public, want to see that he is doing a constructive job.

The Chairman: Well, the best way of doing that is to have the reasons of the minister published, and, secondly, to have his decision subject to appeal.

Are there any further questions?

Senator Buckwold: Mr. Chairman, I do not have a further question, but I would very much like to see the prepared statement of Mr. Biddell. I should like to see it included in the record.

Senator Connolly: Let us print it in the record at this place.

The Chairman: Well, I should like to point out that this committee is charged by the Printing Bureau for everything that is printed.

Senator Connolly: Oh, well, in that case, let us leave it.

The Chairman: Perhaps we can copy it and distribute it to the members of the committee.

Senator Buckwold: I would like to have it, because I know it represents a lot of work.

Mr. Biddell: Well, I have 25 copies here.

The Chairman: That is all we need.

Then, since the members of the committee have no further questions, Professor Trent, is there anything more you would like to add to what you have already said?

Professor Trent: I think the only thing we would like to stress, Mr. Chairman, is the strengthening of the legislation so that it will achieve the objectives set out in the bill and that have been enunciated by the government itself. However, I shall not reiterate the strengthening we think should be done because it is all in our brief.

The Chairman: Is there anything you would like to add, Mr. Biddell?

Mr. Biddell: No, thank you. You have been very indulgent.

The Chairman: No. We asked you questions, as you know.

Since there are no further questions from the members of the committee, I should like to take this opportunity on behalf of the committee to thank you, Professor Trent, and you, Mr. Biddell, for coming here and giving us the information you have given us.

The committee adjourned.



FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

Issue No. 16



WEDNESDAY, JUNE 27, 1973

Fourth and Final Proceedings on Bill S-4 intituled:
"An Act to amend the National Parks Act."

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate of Tuesday, May 22nd, 1973:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Laing, P.C., seconded by the Honourable Senator Connolly, P.C., for the second reading of the Bill S-4, intituled: "An Act to amend the National Parks Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Laing, P.C., moved, seconded by the Honourable Senator Connolly, P.C., that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, June 27, 1973
(16)

Pursuant to adjournment and notice, the Standing Senate Committee on Banking, Trade and Commerce met this day at 4 p.m.

Consideration of Bill S-4, "An Act to amend the National Parks Act," was resumed.

Present: Honourable Senators Beaubien, Burchill, Connolly (Ottawa West), Cook, Flynn, Lang and Smith. (7)

Also present, but not of the Committee: Honourable Senators Bourget, Cameron, Carter, Goldenberg, Norrie. (5)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

It was proposed by Senator Burchill and *Resolved* that Senator Connolly (Ottawa West) be Acting Chairman for this meeting.

The following witness was heard:

Honourable Jean Chrétien, Minister of Indian and Northern Affairs.

On Motion of the Honourable Senator Flynn, it was *Resolved* to report the Bill as amended. (See Report).

On Motion of the Honourable Senator Smith, it was *Resolved* that consideration be given to the conduct of a more detailed examination of Canada's present National Parks policy and administration by a committee of the Senate at an appropriate time.

At 5:25 p.m., the Committee adjourned until 9:30 a.m. Thursday, June 28, 1973.

ATTEST:

Georges A. Coderre
Clerk of the Committee

Report of the Committee

Wednesday, June 27, 1973.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill S-4, intituled: "An Act to amend the National Parks Act", has in obedience to the order of reference of May 22, 1973 examined the said Bill and now reports the same with the following amendments:

1. *Page 1:* Strike out lines 30 to 34 and substitute therefor the following:

"Majesty in right of Canada;

b) agreement has been reached with the province in which the lands are situated that the lands are suitable for addition to a National Park; and

c) notice of intention to issue a proclamation under this section, together with a description of the lands proposed to be described in the proclamation, has been published in the *Canada Gazette* at least ninety days before the day on which he proposes to issue such proclamation."

2. *Page 4:* Strike out lines 35 to 39 and substitute therefor the following:

"jesty in right of Canada;

b) agreement has been reached with the province in which the lands are situated that the lands thereby set aside are suitable for a National Park; and

c) notice of intention to issue a proclamation under subsection (1), together with a description of the lands proposed to be described in the proclamation, has been published in the *Canada Gazette* at least ninety days before the day on which he proposes to issue such proclamation."

3. *Page 5:* Strike out line 1 and substitute therefor the following:

"11. (1) The Governor in Council may, after"

4. *Page 5:* Add immediately after line 16 the following subclause:

(2) The Governor in Council may, after the consultation referred to in subsection (1), issue a proclamation under that subsection, where notice of intention to issue a proclamation under that subsection, together with a description of the lands proposed to be described in the proclamation, has been published in the *Canada Gazette* at least ninety days before the day on which he proposes to issue such proclamation."

It is further recommended that consideration be given to the conduct of a more detailed examination of Canada's present national parks policy and administration by a Committee of the Senate at an appropriate time.

Respectfully submitted.

J. J. Connolly,
Acting Chairman.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, June 27, 1973.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-4, to amend the National Parks Act, met this day at 4.00 p.m. to give further consideration to the bill.

Senator John J. Connolly (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we have with us today the Honourable Jean Chrétien, the minister responsible for national parks, in connection with our consideration of Bill S-4. Since our consideration of this bill was interrupted several times by other measures we had before us, I went through the bulk of the evidence which has already been transcribed. Without limiting the consideration of the matter by the committee or by the minister, or in any way restricting members of the committee, I thought it would be a good idea to gather the material which had been garnered during our various meetings. There are perhaps four or five items which we have to consider particularly, one especially from Senator Flynn.

The first item relates to representations of the Alpine Club of Canada with respect to an enlargement of the proposed parks both in the Yukon and the Northwest Territories. The second point was raised by Mr. Worrall, who acted for Alviya Mines Limited and, I believe, another mining company, in respect of certain mining properties owned by the company. He asked that the area upon which the claims had been staked should be excluded from the park. The third set of representations was made by the Whitehorse Chamber of Commerce and the Yukon Chamber of Mines. They requested that detailed studies be carried out regarding mineralization and hydro potential, especially in the proposed Yukon Park. The fourth point was raised by the Haines Junction Local Improvement District. This was not a verbal presentation, but by way of telegram, subsequently followed by a short brief. They commend the bill and ask that the boundaries as far as the Yukon part is concerned, Kluane National Park, be retained.

Senator Flynn raised a special point in connection with the matter of public notice and opportunity to present views with respect to a proposed new park or an extension of an existing park. Senator Smith proposed, toward the conclusion of our sitting on June 13, that consideration be given to a more detailed examination of Canada's present national parks policy by a committee of the Senate later this session. This, Mr. Minister, arose mainly

because of the fact that there were questions of a searching character asked by members of the committee and other senators from various parts of the country. It was thought, therefore, that perhaps this bill is not a fully appropriate vehicle to carry out an in-depth examination.

I should inform you that the purpose of further study by the Senate was strongly supported by Senator Arthur Laing, who felt that it would be of great benefit to give some publicity to the great work that has been carried out in connection with the parks and the great asset they are to Canada.

We also gave consideration to proposed amendments, which I understand have been discussed by officials of your department and those of the Department of Justice, in connection with a 90-day notice and publication in the *Canada Gazette* before issue of certain proclamations.

Senator Walker proposed that before the boundaries of the Yukon Park are set an independent study of the mineral inventory and hydro-electric power potential be carried out.

I am sorry I have been so long, but I have tried to bring the principal points together for your consideration. I hope I have covered them all, and I am sure your officials have already brought them to your attention.

Mr. Minister, the floor is yours.

Hon. Jean Chrétien, Minister of Indian Affairs and Northern Development: Thank you, Mr. Chairman.

Honourable senators, I am very happy to appear before you this afternoon to discuss the points raised before the committee over a period of time. As you know, of course, this bill has a very specific purpose. Since 1968, due to the great demand for more conservation in Canada, the government has taken very aggressive steps to establish more national parks in order to preserve against exploitation some of the best locations in the land for future generations. We have established eleven new national parks since 1968. Of course, the establishment of parks is bound to create problems because of various interests in the particular areas. I do urge honourable senators to keep in mind that these parks are established not only for our generation but for many to come.

I spent a few hours in Banff with Madam Gandhi last week and had time to visit in a little more relaxed way. This led me to appreciate the wisdom of those who at the end of the last century decided to set aside a few square miles of this beautiful land for preservation. It is one of the jewels of North America and perhaps of the world. I have read that at the time this park was set

aside at the end of last century the incumbent minister was almost laughed at. He was asked what its purpose was, and was told, "No one goes there; it is right in the bush"; that if it was simply to preserve a hot spring, why should he go to all that trouble? That was the establishment of the first national park in Canada. Now, due to the action of this government, we have extended the system so much that we have more square miles devoted to national parks than any other country.

The points raised by your chairman, Senator Connolly, relate especially to two of the parks. One is Kluane National Park, which involves certain problems. The other is Nahanni National Park, about which representations have been made. You will recognize the difficulty in which the minister finds himself: on the one hand are those who are for conservation and insist that we have not put aside enough land for preservation; on the other hand are those who have mineral or other interests in the area, who say we must not make a move because they will be deprived of some sort of potential.

Dealing first with what I consider to be an easy problem in Nahanni National Park, Mr. Chairman, the Alpine Club wants us to take up more land at the far end of the park. We are looking into that. It is an area of high mineralization. We had to take a lot of land away from the people who saw a lot of mineral potential there. My experts have told me that what we have taken is substantially what is needed for the preservation of the area.

We wanted to preserve the last wild river in Canada. We have achieved it with the boundary that we have. Some people would like us to take more land than we have taken, and others think that the land in the area can be developed.

Following the advice of my experts, we came to the conclusion that in our judgment we had done what was necessary.

Regarding the Kluane area in the Yukon, about which you have received some representations, I was in the Yukon myself not long ago. I was on a hot-line show and discussed the problem with various people. Some day you may wish to undertake a special study and I hope you take the time to see what we are talking about. The Kluane area is one of the most fantastic in North America; I am sure of this. The highest peak in Canada, Mount Logan, is surrounded by fabulous glaciers, the work of centuries. All this can be seen when flying over the area. We have taken some good land in the foothills of the ranges in order to have sufficient land to permit those who cannot hike or take a plane to see the glaciers, to enjoy nature and the panorama there. It is a huge area. I do not think we have been unreasonable about it. The Alpine Club and conservation groups tell me that I did not take enough, and mining people say I am taking too much.

Before we made a decision we had extensive discussions with the mining groups. We came up with a much larger area and we cut down in order to accommodate them. Having made that accommodation, they came back

here and asked for more. We would have been left with just the glacier. Some people will say it is crazy to take this area because there will not be many visitors in the next 20 years. I agree. But, as I said before, I make this plea because it is for generations to come.

For those who have been to the three national parks in the North, the area is unbelievable. For instance, the Virginia Falls are twice as high as Niagara, having the same volume of water.

The Kluane area is fantastic. There are a few areas of land that have been taken over. In consequence there will be a few claims, and we will compensate the people involved. But we do need sufficient land in order to give visitors a real experience of nature.

Sheep can be seen on the mountain. We do not want people to be caught between a mine, french-fried stands, and a Coney Island type development. We want people to be able to move in an area where nature is protected. The same thing applies to the park on Baffin Island. I am proud of that. I think it is due to my own decision that those parks were established. I flew over the area three or four times, and I said, "We must preserve the area." The fjords there are bigger than those in Norway. There are 4,000 feet of rock rising from the ocean, topped by an immense glacier.

There will not be many people going there for a new generations, but perhaps in 50 years' time people will be so fed up with the Riviera and Miami that they will go to Baffin Island to see something that has been preserved.

Now we are caught up with people who come to us with other interests. I can understand that; it is human nature, "I must protect my own interests," but we could end up with huge glaciers and no land for the development of a park.

We have looked seriously at the problem and have discussed the situation with the mining people. We have cut down in some areas. I do not think we can cut down much more. Despite the action taken, there are some people who tell me that I am not taking enough land. I have to make the decisions. They are not easy decisions, but in my view and that of my advisers, they are the best decisions under the circumstances. One person says, "Let's have our piece of land." Another will come tomorrow and say, "The government is flexible; let's take a few hundred square miles more."

The philosophy of the national parks is that even if Tunnell Mountain in Banff National Park was discovered to have gold, we would not permit people to mine it. That is the philosophy of the National Parks. We consider that those areas should be preserved as they are.

This is what we have in mind and what we are doing in The Kluane area. A group came with a project that we should develop the water there to make a huge hydro-electric development. The same thing was tried in another part of the Yukon. They spent millions of dollars in developing that area and found it uneconomical to do so.

Let us do the thing right. We have a marvellous place to preserve. There are people holding views on both sides of the argument. They have to make up their minds. If you take all of the water from Kluane Park, you will be left with a glacier and nothing else. When the young people go there in the summer they will want to see some creeks and rivers preserved. They will not want to see a river polluted by a mine, or some Coney Island development along the river.

In 100 years from now it will be an economic asset for the country, because people will be working less; they will want to see nice things; their experiences will be different and they will want to go into the national parks to enjoy good experiences. At the same time we can be proud as Canadians—in 50 years' time, some of us will not be here—that we are doing the right thing.

We have had discussions with the mining industry, and we have cut some land. Some people are critical of what we have done. After we have made concessions, they come along and ask for more. One day, unless we are careful, we will be left with no parks. Give away one per cent of our national parks each year and in 100 years we will have no national parks.

We cannot permit that kind of degeneration of our national parks. Let us make up our minds. I do not want to have half a park. I want to have a whole park or no park at all. Some people have recommended that we advertise any additions to parks in the future. That is fine. I am ready to do that. I have no objection to doing so. I do not know how the lawyers feel about that. I do not want to play a game of hide-and-seek. Let us be aware of the things that we are doing. We are not doing this for ourselves. There are a lot of people today who feel that if we do not put aside some of the good pieces of land we have in Canada for conservation purposes, tomorrow we will have such a fight on our hands that the people will want to stop everything because we are not moving in the right direction.

In the Yukon we have put aside 8,000 square miles purely for conservation. No one can say that we are not concerned with conservation. We have taken the Nahanni River for conservation. We have also put aside 8,000 square miles on Baffin Island. Those are huge chunks of land. They should be preserved for future generations.

Mr. Chairman, if honourable senators wish to ask questions, I am ready to answer them. I believe in what I am doing, and I hope I can convince the committee of the worth of this.

The Acting Chairman: Mr. Chrétien, as I said at the beginning, it is gratifying to have you here. It is particularly gratifying to hear you speak in the way you have. The people who live near these parks and who know them feel very deeply about them, and it is obvious that you have this same reaction.

Honourable senators, the minister is open for questions.

Senator Flynn: I think the committee is very much in agreement with the general ideas of the minister; I do

not think there is any question about that. The only problems facing the committee are technical ones, such as the procedure to follow when enlarging or setting up a new park. We want to be supplied with the best information concerning the determination of the boundaries, and so forth.

Hon. Mr. Chrétien: There are two aspects in establishing national parks. The northern parks have been established within my ministry because I control northern development, so I consulted with myself. There was an extensive discussion before in the Yukon and a lot of representations were made to me to establish the park. Some people were telling me to do more, and some people were telling me to do less. I came to the conclusion that you have in front of you today.

Of course, there does seem to be some confusion and, as always, after there is controversy, certain people try to back off and blame the superior government for it. The mayor of a municipality, for example, blames the provincial government if there is a problem; the provincial government blames the federal government if there is a problem; we don't blame anyone else, except the Americans once in a while.

At any rate, my department has made a survey of Canada and for years we have tried to identify the best possible places to preserve as national parks. Before we decide on any national park, however, we do meet with the provinces, and all the provinces know the particular part of their province that we are interested in for park purposes. It is only after that that the provincial governments come to us and say that they agree that the particular area in question should become a national park. We then negotiate with the provincial government about the size of the park and the kind of development there will be in it, and the techniques that should be followed before we actually establish the national park. So there is much consultation with the provincial authorities, and the local citizens are definitely involved.

You know, Senator Flynn, there was a group of people in Forillon who actually fought for years to have a national park there. Similarly, in La Maurice there was a citizens' group organized which for one and a half years kept banging on the doors of all the members of the provincial government, and on my door, in order to have a national park there. There is a committee in Lac-Saint-Jean in Quebec who would like to have a national park there. There is a committee right north of here, in Timiskaming, Ontario, and they would like to have some of their land preserved for a national park. So there is, as you can see, citizen involvement right from scratch.

At one point we have to decide just what the dimensions of the national park will be. In some areas we have been obliged, I must say, to expropriate people. After all, when the area you are interested in has people living in it, you have to make the decision whether to expropriate or not.

I notice two senators here who would be interested in Ship Harbour Park. Perhaps I could explain to them and other members of the committee just what happened

in that case. We had a plan for three different sites in Nova Scotia, and the provincial government decided that Ship Harbour was the most suitable location. We negotiated with them for quite some time, and the question was whether we should take this or that part of the land in question for the park. Should such-and-such a village be in the park, in other words. We were left at the end with an agreement by which there will be three little fishing villages included, which I believe would involve something like 50 fishermen whose property would have to be expropriated. A number of private cottages or summer homes would also have to be expropriated because they would be in the park, and because we wanted to have the lake incorporated, since it was of national park value.

As you know, we do not normally permit private individuals to remain in national parks—although there are a few left in some of the western parks, and in fact, in Banff just the other day the residents of the park raised a question about the summer residents who are there now—but I am presently negotiating a formula with the government of Nova Scotia, on the basis of a formula we used successfully for Newfoundland, which would allow the fishermen to live on in their houses, with the stipulation that if they wanted to sell their houses they could only sell to the government. The reason for that is, of course, that they have been living there for generation after generation and it would be an undue hardship to make them move now.

But with respect to the owners of summer residences, I know it is a hardship for anyone with a camp to be forced out—in fact, I know it is painful and I sympathize—but if we look at the problem in terms of the future, the decision makes sense, because, as I explained at the beginning of my remarks, we are not doing this for the present generation but rather for the future in order to preserve the best of our land, the land which has the greatest national value, for future generations. Perhaps those people can accept the decision in that light.

Incidentally, I am informed that we have 50 permanent residents who will be expropriated and 25 who are seasonal occupants who will be expropriated. So it is not a question of hundreds being expropriated, but only 75. Obviously, there is a problem of communication here.

Now, the same problem exists with respect to the new parks in New Brunswick where we also had to expropriate people. Bear in mind, however, that whereas in a period of forty years only three national parks were created in Canada, in the last four or four and a half years we have created 11 new national parks because of the need for them. Bearing in mind, it is not unlikely that we have made some mistakes I am willing to admit that. But I am a flexible person. We came to terms with the Newfoundland government just last week. I made a general agreement with the minister about three weeks ago as to how we will look at the problems and details. The nuts and bolts of the problems were put into place, so to speak, by my technical officials within the last three weeks. I am doing the same thing in Nova Scotia.

There will be some people affected, of course, because you cannot build even a highway or a school without people being affected. Sometimes people are expropriated, but it is for valid reasons. Naturally, it is not pleasant but it is necessary. Even my own grandfather's farm was cut in half less than two years ago in St. Etienne des Grès because a road had to go through and it cut his home off from the St. Maurice River.

That was quite a shock and my uncle was quite angry with me because it was the federal government which provided the money to build that road. He thought I should have done something to cause the road to avoid my grandfather's farm. I said, "Well, I could not do anything about it." That is the kind of thing that one has to face.

Now, I give you these details simply to clarify the point.

As to the acquisition of new land for parks, when the parks are established I think the suggestion of Senator Flynn and Senator Molson that we should give public notice before is not a bad point. I have no objection to that at all; absolutely none.

The Acting Chairman: Are you talking now, Mr. Minister, about specific proposed amendments given to us on June 13 by Mr. Nichol?

Hon. Mr. Chrétien: Yes, we have agreed with that. In any event, I cannot do that. I can adopt two techniques. One would be to expropriate to obtain the land, but sometimes my department would do that just to secure one house. In Point Pelee we bought 50 summer homes over a period of years, as they came on the market, and there are almost none left. If we want to add land to our parks, however, I have no objection to giving public notice. Generally speaking, when that is necessary we do not do it ourselves, but ask the province to acquire the land, and we share the cost.

The Acting Chairman: Is that for federal and provincial parks?

Hon. Mr. Chrétien: No, I have nothing to do with provincial parks. I am minister responsible for national parks.

The Acting Chairman: Just for the national parks.

Hon. Mr. Chrétien: Yes. Therefore, when I needed just 10 square miles for park purposes, as was the case in Quebec for the Mauricie Park when we found we were losing some good pieces of land, we asked the provincial government to buy it, and they turned Lac Lapêche over to us. It is a beautiful lake, which should have belonged to the park, but by mistake or lack of understanding, we had not obtained it. The lake was owned by the city of Shawinigan, which turned it over to the provincial government, which in turn made it available to the federal government. It involved much communication, but if the members of the committee desire further publicity by giving 90 days' notice I have no objection.

Senator Flynn: Some witnesses who appeared before us suggested that and the committee members thought that it would be useful to the department to have public notice given in advance. We would then not receive such complaints as at present. Some witnesses said they wanted us to alter the boundaries of the proposed parks. We in this committee are not in a position to do that, nor could it be done in committee of the whole. It is a technical matter and to avoid repetition of the situation we thought public notice would be a useful device.

Hon. Mr. Chrétien: But there was much public interest in the Kluane National Park in the Yukon. I debated it with the mining industry over a long period of time. The deputy minister, John Gordon, spent days and days with them discussing the pros and cons. We added some land. Residents who must be expropriated come at the last minute and request that they be excluded. That is the process of erosion that leads to the situation in which we would be faced with losing the real value of the land.

Senator Cook: I do not know how you wish to proceed, Mr. Chairman, but in my opinion most of us agree in connection with the Kluane National Park that there has been real investigation and the boundaries have been drawn in good faith and there is nothing further we can do about it. If you would like me to move approval of schedule V, I will do so.

The Acting Chairman: I suppose we could do it that way, or call the bill clause by clause.

Senator Cook: I thought we might depart from consideration of this national park and discuss the general points.

The Acting Chairman: What is the wish of the committee? Is it necessary to go through the bill clause by clause?

Senator Flynn: There is only one point, and if the minister is agreeable to amendments, that will be satisfied. If he is not, I will not press the matter further. I have given the reason for my suggestion.

The Acting Chairman: Senator Flynn, the amendments are set out at page 9:23 of the June 13 evidence before the committee. They consist of amendments to clause 2, page 1, subclause 10(2), page 4, and clause 11, page 5. The effect of these amendments in every case is the same. They provide that before the issue of a proclamation, publication of the description of the lands be made in the *Canada Gazette* at least 90 days before the day on which the proclamation is to be issued. I take it that the minister says that, if you consider that section to be helpful, he has no objection. Perhaps Senator Flynn, in that event, would like to move the amendment to that clause.

Senator Flynn: I will move it.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: I should say that I was asked whether these amendments are in a proper form. Needless to say, they are.

Senator Flynn: Yes, I asked you.

The Acting Chairman: Having approved these amendments, I take it that the committee does not wish to go through the bill clause by clause. We have considered it thoroughly.

Senator Flynn: We will report the bill with those amendments.

The Acting Chairman: The direction of the committee is that I report the bill with the amendments I have outlined.

I will come to you, Senator Carter. I am not closing anyone off, but I thought that so far as the bill is concerned we should deal with its detail.

One other point I should raise, in fairness to Senator Smith, is that we discussed at an earlier meeting that our report might also carry a rider to the effect that Senator Smith said on June 13 at page 9:25 that he would move that consideration be given to a more detailed examination of Canada's present national parks policies by a committee of the Senate later this session. Perhaps we should say "at some future time," or "at some appropriate time." Is it the direction of the committee that that be incorporated in the report?

Senator Flynn: Yes.

The Acting Chairman: Is that agreed?

Senator Cameron: I would prefer to set a time, such as next fall and not leave it "at some appropriate time."

Senator Flynn: But that needs a formal motion. The committee can recommend to the Senate that such a study be undertaken at a future date. Then any member of the Senate may move formally that this matter be referred to a standing committee of the Senate.

Senator Cook: Or a special committee.

Senator Flynn: This recommendation would not be binding on the Senate; it is really an expression of a recommendation.

The Acting Chairman: I think Senator Flynn is right, Senator Cameron. This in no way inhibits the Senate and, in any event, there would have to be some special action taken by the Senate before the study could be undertaken.

Senator Cameron: In the interests of the parks and those who live in them, there should be a free and open discussion of various matters affecting them.

The Acting Chairman: You are not the only member of the committee who thinks so. You have good company in Senators Laing, Norrie and Carter. So far as the business part of this meeting is concerned and the bill before us, I have, what is required of the chairman, to make my report. I know Senator Carter has some questions for the minister; perhaps Senator Norrie also.

Senator Carter: Mr. Minister, when you establish a new park, who initiates the proposal? Do you go to the provinces, or do you wait for the provinces to come to you?

Hon. Mr. Chrétien: Over a period of time, Senator Carter, we have surveyed the possibilities of national parks and desirable areas for them. Generally, when it is established that an area could become a national park, local interests put forward proposals. For example, in the Mauricie National Park, which I know well; it is not in my riding, but it is in my general area, citizens were interested in having a national park established. They therefore approached me and the provincial government. In that case it was more or less initiated by us. As you know, there never was a national park in Quebec before, but now we have two, Forillon and La Mauricie. In the case of Ship Harbour, two more locations were considered in discussions between the two governments. Some provincial governments would like and take the initiative to propose the establishment of more national parks. Occasionally it is our own initiative and occasionally that of the provincial government. In the last few years I must say, honourable senators, that aside from a couple of projects which were under discussion before I became minister, one of which was Ship Harbour, most other areas were established on our initiative. They were the two parks in Quebec and the three parks in the north. The Vancouver Island National Park, Pacific Rim, was in the mill before I arrived. It was pushed by my predecessor, Senator Laing, but it was not realized at the time I came. Generally speaking, in the last few years the federal government has been aggressive in getting more new parks in Canada. But in some instances it was discussed between the federal authorities and the provincial authorities before I became minister, and I cannot tell you who initiated the process of negotiation.

Senator Carter: There seems to have been a change in parks policy in recent years. Originally the idea was to have parks in wilderness areas some distance from population centres. The new policy seems to be to have them as close as possible to population centres. Is that a fair statement?

Hon. Mr. Chrétien: As much as we can, yes, we would like to have national parks closer to areas of population. Ship Harbour, we think will be the closest national park to a big city in Canada. We have tried lately, without success, to expand the Georgian Bay National Park. There is a very small park there, and we think it should be expanded because it is over-used at present.

La Mauricie National Park is only 90 miles from Montreal and 90 miles from Quebec City. We like to have some parks closer to population areas, because when you have parks only in wilderness areas people have no access to them. I believe it is important for young children, who are not wealthy and who live in the big cities, to have access to the parks. That is why we like to have national parks close to cities, if possible.

We have also to recognize that the closer we come to the cities, the more difficulties arise. It is easier to

establish a national park in, say, Baffin Island than to establish one at Ship Harbour or in New Brunswick.

Senator Carter: I am a Newfoundlander. Ship Harbour Park is in Nova Scotia, and it does not affect me personally. What concerns me is the rights of people. How do you square that with the rights of people? Nova Scotia is a small province. No one in Nova Scotia is very far from a national park. We have one on Cape Breton Island. One is never too far away from it. There is one only 25 miles away from Halifax. When you say that you are going to establish a park, you say to some people, "We are going to take your land."

Hon. Mr. Chrétien: Seventy-five persons.

Senator Carter: I am not talking about individual persons; I am talking about the general principle, and I am not interested in individual cases. It seems to me that you are saying to certain people, "We are going to take your land. The reason why we are taking your land is to provide a convenience for some people who live in the city 25 miles away." How do you square the rights of those from whom you are taking land with the rights of those who are going to benefit from it? Surely, in Canada they are all citizens and all have equal rights. That is the thing that bothers me. You are declaring these people to be second-class citizens.

Hon. Mr. Chrétien: I would like to reply to that. When we are establishing a national park, we are serving the greater interests of the people of Canada in preserving a piece of land for conservation purposes. It is for the good of Canadians that we may have to deprive a certain number of people of their land. If we are building a highway and we go right into your house, we are depriving you of your right as a citizen of owning a house. But we are doing it for the greater benefit of many people to be able to travel with their cars. You may be upset; but there are laws in Canada to compensate you adequately for the inconvenience caused you. The person affected is not a second-class citizen; he is a person who is obliged to give away a personal interest in order to serve the greater interests of the community.

Senator Lang: And you pay them.

Senator Norrie: Whom do you pay?

Hon. Mr. Chrétien: Everyone whose property is expropriated; we will make sure that they are adequately compensated. There is a very strict law about that, which was brought in by the House of Commons and the Senate a few years ago, to make sure that adequate compensation is provided. Anyone who is expropriated feels sorry. A few minutes ago I told you the story of my uncle who is as mad as hell—

Senator Norrie: I have never met your uncle, but I think I would sympathize with him and fight his battles for him.

Hon. Mr. Chrétien: I do not fight his battles. His piece of land was in the way of a highway; and if you cannot expropriate in this country—

Senator Norrie: Mr. Minister, you are missing the point. The point is that I agree with expropriating property at certain times for vital things, and I think a highway, an airport, or anything vital like that is really worthwhile.

Hon. Mr. Chrétien: But not a park?

Senator Norrie: Not a park, when you are going to confiscate areas that involve their just rights from way back—

Hon. Mr. Chrétien: You used the word "confiscate." We are expropriating land for park purposes. If you do not believe that parks are a good endeavour, you can say you are against national parks, and I—

Senator Norrie: I am not against national parks; I am not against provincial parks: I am against kicking people out of their own property. That is the point; that is the only point that I am fighting for. Perhaps we could bring in an amendment to this bill to leave people where they are, the same as they do in Britain. I have never heard you expound about that act in Britain. They say it works very well. I would like to hear your views on that. If they cannot be held within the confines of the park boundaries, and a solution found for everyone—

Hon. Mr. Chrétien: I have just said that I am willing to do that with the fishermen.

Senator Norrie: What fishermen?

Hon. Mr. Chrétien: The fishermen who are within the park. But I am not willing to do that with the summer residents.

Senator Norrie: If you can do it for the fishermen, why can't you do it for the rest of them?

Hon. Mr. Chrétien: Because they are two different situations. The fishermen live there.

Senator Norrie: Aren't you a little flexible? These parks are all different.

Hon. Mr. Chrétien: Excuse me, madame. I know that perhaps some people whom you know will lose their summer residence. I am sorry for them. But, as far as I am concerned, I think a national park is more important than the summer residents in the park. We have expropriated people before in order to establish parks. We have expropriated at least 100 people in Point Pelee National Park over the last 10 or 15 years. Every year we expropriate, and there are only 10 or 15 left there. In five years there will be no more summer residents in Point Pelee National Park.

Senator Norrie: And I don't approve of it. I think it should stop right now.

Hon. Mr. Chrétien: I do not agree with you.

Senator Norrie: I have never gone out in a taxi in this town without somebody—every taxi driver in this town has a summer residence to go to, and they wait

for the moment when they can go there. Why don't you expropriate some of those areas? Why don't you go to Chester, or Hubbards or Lunenburg, where the wealthy estates are? The homes there are only occupied in the summer time. Why not expropriate in those areas?

The Acting Chairman: Order!

Hon. Mr. Chrétien: Madam senator, we have decided that there will be a national park in that area. I have not been told that the people of Nova Scotia do not want a park there. Negotiations with respect to that park have been going on for a period of two years with the provincial authorities, and those negotiations not only involved the present administration but also the previous administration. They were interested in having a third national park in Nova Scotia.

Of course, when you do establish a national park near a city you have to expropriate people. When we established the national park in La Mauricie we had to expropriate the area around Wapizagonke Lake. Some people whom I know very well were involved, and they were furious with me because of it. However, the only consideration I had was that I wanted to have a national park within 90 miles of Montreal and within 90 miles of Quebec City.

Senator Norrie: Tell me why the park boundaries of the Cape Breton Highlands National Park were not pushed out to take in the whole northern part of Cape Breton Island. Two thousand people rose up in arms and would not let you do so. Tell me the real reason why they backed down.

The Acting Chairman: I think, Senator Norrie, that that is beyond the purview of this bill. In any event, this was something which was done long before the Honourable Mr. Chrétien was the minister responsible for national parks.

Senator Norrie: Yes, I agree with that.

The Acting Chairman: I do not think you can ask the minister a question like that.

Senator Norrie: But is it not appropriate to ask him to allow people to stay within the boundaries of the national parks?

The Acting Chairman: I think you are perfectly within your rights, Senator Norrie, in being quite vehement in suggesting that that should be the policy, and I think you have done so very well. I think the minister has also given a very clear enunciation of the policies that he is applying or attempting to apply in the department. It seems to me that there has to be respect on both sides for the views that are being expressed both by the minister and yourself.

Hon. Mr. Chrétien: Mr. Chairman, I would like to make a comment, if I may. I am accused of all the ills there are. There are 25 summer residents involved.

The Acting Chairman: Which one are you referring to now?

Hon. Mr. Chrétien: I am referring to Ship Harbour National Park, Mr. Chairman.

The Acting Chairman: Yes.

Hon. Mr. Chrétien: In the original plan there were six communities which were included. After looking at that plan and discussing it, I have excluded those communities. However, to keep the integrity of the park I had to do something. In order to be able to establish a national park 40 miles away from Halifax we have to expropriate 25 summer residents. I do not think that is a high price to pay for a national park. Now you tell me to leave those people there. Either you have the park or you do not have it. You can't have your cake and eat it too. I am told that that is an old English expression! Either you want a park or you do not want a park. There are many difficulties involved, as I have tried to explain. On the one hand, you tell me to leave the people there, and then the Sierra Club and the other conservation groups come to me and tell me that I am not setting aside enough land for preservation. They tell me I have to preserve more land for the benefit of future generations. They complain about pollution and ask us to do something about it. So we try to do something. We have to compromise all the time.

For months we discussed the Kluane National Park in the Yukon. We had to make certain compromises with the mining interests. We cut down in some areas. Now, after I agreed to that compromise, they come down to see you and say they want even more cut. Of course, as I said before, if you keep cutting down on the national parks, as some people would have us do, in 100 years there would be no more parks.

Perhaps you will claim I am dictatorial. The men who 100 years ago set aside a few square miles in Banff had a lot of wisdom. Today there are three million people who visit the Banff National Park every year. As a matter of fact, the problem I am faced with today in relation to Banff National Park, madam senator, is that there are too many visitors. The new national park 40 miles outside of Halifax will make the Halifax area one of the most attractive tourist areas in Canada. Should we sacrifice that because 25 summer residents do not like it? Excuse me, madam senator, but I cannot accept that rationale. Perhaps we were a bit tough on the fishermen. I recognize that.

In the last four years I have created 11 new national parks in Canada. In the previous 40 years there were only three such parks created. I think I had the support all along of both the Senate and the House of Commons in doing so, but because I had to move quickly I made some errors and I backtracked. I am not shy about that. I came to an understanding with the people of Newfoundland concerning the Gros Morne National Park, and I have backtracked a lot in relation to the Ship Harbour National Park. Now you want to have the last bite. You want us to allow these 25 summer residents to remain within the park. I do not think I can do that. If we do that now it will create a precedent. We will

be questioned as to why we do not give permission to others who come along.

Senator Norrie: Are you saying that by giving permission to these 25 people to remain that eventually you will have a hundred people there?

Hon. Mr. Chrétien: The problem is that it would create a precedent. Ask Senator Cameron about the situation in Banff. There are summer residents in Banff. There are people in Banff who work there who cannot live there. We do not want to have cities in our national parks. Yet there are some people have many acres of land within Banff for which they pay a nominal sum of \$16 a year to occupy those lands.

Senator Cameron: No one does that any more.

Hon. Mr. Chrétien: Yes, there are. They pay a nominal sum of \$16 a year. That is the kind of problem we would be creating. I have a lot of sympathy for these people. I think we should help these people find a new place and help them relocate nearby; but not in the park. I think we should provide them with a good site and compensate them adequately. I am ready to do that. However, we cannot allow them to remain. I am not an expert on this, but my experts tell me that those 25 summer residents have to go if we want a national park in that area. If we do, we would be creating a privileged class. In 25 years others will want to know why they cannot have a cottage within the park. They will look at those already there and will ask why they are not given permission. This is the situation we have at Banff. It has been going on for three generations. It looks bad now. I am very embarrassed by it. Some very important people are in that position and people think I am protecting them.

Senator Cameron: May I ask a question? There is a formula which has been used in some areas. I am wondering whether it applies here. The department has a perfect right to expropriate property. I agree with that. However, on occasion there has been a clause put in whereby they can live there for the duration of their lifetime and, following their death, the land reverts to the Crown. I do not know whether this can be applied in this area or not.

The Acting Chairman: That formula has been used from time to time.

Hon. Mr. Chrétien: I am informed that that formula has been offered. We have offered them life tenancy.

Senator Cameron: And they turned it down?

Hon. Mr. Chrétien: Yes.

Senator Goldenberg: They refused it?

Hon. Mr. Chrétien: Yes.

Senator Norrie: Well, they should have refused it.

Senator Goldenberg: Why?

Senator Norrie: If they want to sell that property, let them sell it to the government. However, if they want to hand that property down to their children, they should be allowed to do so.

Hon. Mr. Chrétien: And their children to their children and from the grandchildren to the great grandchildren, and so forth, with the result that you end up with a privileged class.

Senator Norrie: What difference does that make? It's their land.

Hon. Mr. Chrétien: There is a difference as far as I am concerned, madam senator.

Senator Norrie: There is no difference.

Hon. Mr. Chrétien: We are not on the same wavelength.

Senator Norrie: No, we sure aren't.

Hon. Mr. Chrétien: It makes a hell of a difference to me, madam senator. You talk about the rights of citizens. If you have the right to pass it on to your son and your son to his son, and so forth, what happens to the neighbour in the city of Halifax who would like to have the same privilege in 50 years' time? That makes a hell of a difference.

Senator Norrie: That is a different story altogether.

Hon. Mr. Chrétien: No, it is not a different story. A person who has lived there for so many years and who wishes to keep it, that is one thing; we are willing to allow that. However, we are not going to give him permission to pass it on to his children, and so on down the line. We will give them adequate compensation for it—even more than the market value because we do have to take into consideration the circumstances. There is a precedent for that.

Senator Norrie: Why did you write the book *Byways and Special Places* when you take out the human element from all these parks?

Hon. Mr. Chrétien: *Byways and Special Places* is a new program; it is a different program. That is a program I wanted to initiate in order to have more flexibility in the different types of parks. *Byways and Special Places* is to preserve some little spot.

Senator Norrie: But the human element is gone.

Hon. Mr. Chrétien: No, it is not gone. You do not know how much element is in it. I want to make sure that the poor people of Halifax have access to the same areas of nature as do the rich.

Senator Norrie: I will say no more.

Hon. Mr. Chrétien: It is a good liberal principle, and I am proud of it.

Senator Smith: Mr. Chairman, I think you have been quite flexible in allowing such a wide-ranging discussion.

The Acting Chairman: As a matter of fact, it has been a good discussion.

Senator Smith: I was one of those who suggested, in one of our earlier meetings, that we should not be too restrictive in our approach to this subject. However, some of us had come to the Conclusion before the last meeting on this bill that we were going a little too far on the byways.

I gave notice of a motion which I put at that time for the members of the committee who might read the record, which indicated that some of us thought that we should at some time have an opportunity to make a little closer examination into park policy.

The Acting Chairman: Senator Smith, we have already received approval from the committee to include in our report the recommendation that you made, with a few verbal changes.

Senator Smith: I am aware of that too, but I want to go on to say that even to the extent that this has gone on today it has brought forth a passionate exhortation on the part of the minister, giving his point of view and the points of view of a great many other people in this country.

I have some reservations. I am somewhere between the minister and Senator Norrie in that respect. I do think there is a place for a demonstration, for example, of the early way of life on the shores of Nova Scotia. I find that the tourists and visitors from Halifax and from Toronto to my part of Nova Scotia are highly interested in going down on some of the old wharfs that are still maintained by the Department of Public Works to support the small-boat industry. They find there a little sample of the past which is part of the whole scene down there and, if you were ever going to make some exceptions to the proposition that some people should stay within a park area, I would almost implore you to let some of those families, until they are no longer fishing there, stay on as a real attraction as part of our Canadian heritage.

Hon. Mr. Chrétien: You are giving me exactly the same argument which Premier Regan used to convince me to exclude places like Ship Harbour and the other villages. Six of them have been excluded from the park. They are surrounded by the park, but remain a community outside the park. Visitors to the parks also visit those villages even though they have not been included in the park. There are two or three small places which we included in the park, in which case I am willing to give life tenancy to the people, the fishermen, and to their children, if they want. However, we want the right of first refusal if there is any sale.

But what you are talking about was one of the arguments I accepted, as a result of which I deleted from the plans those fishing villages which were supposed to be included in the parks and were supposed to be expropriated. That point has been met by agreement.

Senator Smith: Mr. Minister, perhaps you might be interested to know, as one of the ministers responsible

for Kejimikujik Park, that in the early days of the development of Kejimikujik Park there were several private cottages strung around the lake. I am not sure how many cottages there were or how much money it took to take them out. Some of those people made a minor protest, but they were well paid for their interest in the park. There was another element which said, "What's the good of a national park without a golf course? A golf course is just another million-dollar expenditure, I suppose." Today a great many more people realize that you did the province of Nova Scotia a great service by not putting a golf course in there. There would get to be a Coney Island element in there as well in that case.

People come by the thousands to Kejimikujik Park and all of them have equal access to the lakeshore. From that point of view Kejimikujik is a howling success and I can name some public figures who would agree with me on that because of their personal experience in that regard. So I think you are on the right track there. I was glad to hear you say that you had excluded certain things, because I am a real believer in that. I think it is a fine thing.

Now, I know you are anxious to get the bill through, and I think we should deal with the bill itself.

Senator Burchill: Mr. Minister, I do not come from Nova Scotia; I come from God's country, New Brunswick.

Senator Smith: I thought Prince Edward Island was supposed to be God's country.

Senator Burchill: I have come to the conclusion that there must have been great pressure from one source or another on you to establish another park in Nova Scotia. Was the initiative from Nova Scotia or from your department in this particular case?

Hon. Mr. Chrétien: I must say that there was some active promotion for the Ship Harbour area in Nova Scotia by public support. In fact, certain people campaigned on that in that area and were elected provincially. Yes, I have been under pressure to establish a national park there. Of course, when the question of expropriation arose, according to the original drafting of the park, we were to expropriate something like 500 people at least, including Ship Harbour and the six villages. We have since excluded those and are now down to 50 fishermen who can stay there and pass their property on to their children, and 25 summer residents who can occupy their cottages until they die, but who cannot pass their property down to their children. So, out of 500 that is not too bad, and for people to try to picture me as a tough, arrogant person who will not do anything is perhaps not fair.

Senator Norrie: Mr. Minister, we did not know any of the details of what was going on down there. Did you know that?

Hon. Mr. Chrétien: As I said before, Senator Norrie, perhaps there has been a problem of lack of communica-

tion or poor public relations. I know that when we announced the agreement, I went to the province of Nova Scotia and had a press conference for one hour. Another time I had interviews on the whole question. Of course, the provincial government was under attack on that. I read that in the papers many times. But what I have explained here today, I explained in committee in the House of Commons, and I know that, despite what I have said today, tomorrow some people will still create the impression, for political gain, that we are ruthless and that we are expropriating a great number of people. I tell you that there is nobody in that park who will be forced to leave, but for the summer residents when they pass away; we will take the property and compensate the family for that; and as for the fishermen in Clam Harbour and in the other two little places, they can pass their properties on to their children if they are living in the park.

Senator Norrie: If you would like to know the real story, it is the local government in Nova Scotia which gets the brunt of the whole criticism, not the federal government. That is the truth.

Hon. Mr. Chrétien: I am quite ready to share the blame. I do not avoid my responsibilities.

Senator Norrie: I am telling you what the people feel.

Hon. Mr. Chrétien: Madam, when I decided to reduce the expropriation from 500 to 25 summer cottagers, I think I showed a great deal of flexibility, but I can tell you that I will be blamed for not being tough enough or not sufficiently in favour of conservation and for jeopardizing my principles under political pressure from people in Nova Scotia, and perhaps because of pressure from certain graceful senators.

Senator Lang: Mr. Minister, you mentioned the expansion of parks in the Georgian Bay area, which is an area I know rather well. Could you elaborate on the difficulties you say you are experiencing?

Hon. Mr. Chrétien: As you know, there is a small national park there, including Beauséjour Island and a few spots on the coast. In that area there is a lot of crown land and private holdings. Three years ago we made a proposition to the provincial government to try to take as much of the land as possible to go in a northern direction in order to keep some of that coast for national park purposes. Unfortunately, we cannot make a deal.

Senator Lang: That is a tragedy.

Hon. Mr. Chrétien: Well, you are a citizen of Ontario; perhaps you can put pressure on the government; but I tell you that if they have to expropriate some land, the federal government will certainly do as it has done in any other place, it will pay half the cost of expropriation.

Senator Lang: There are some Indian reserves there. That is beautiful crown land.

Hon. Mr. Chrétien: We will not expropriate the Indians.

Senator Lang: I don't think there are any Indians there.

Hon. Mr. Chrétien: We can buy, if they want to sell. There is a lot of Ontario crown land which is available, but they do not want to turn it over to us.

Senator Carter: Mr. Minister, you have recently modified your policy with respect to Gros Morne Park with respect to the fishing settlements which are going to be wiped out. Is it fair to assume that the policy which applies to Gros Morne will also apply to Ship Harbour?

Hon. Mr. Chrétien: We have not made a formal agreement in that respect with the Nova Scotia government, but it is quite evident that I must follow the same course. I cannot have one policy for Newfoundland and another for Nova Scotia. Therefore, in principle that would apply. The population of fishermen involved in the present design of the park at Ship Harbour is much less, being only 50.

Senator Carter: Mr. Minister, I would not like the record to carry a statement of the minister which I was about to rebut when I was interrupted. Earlier you drew a parallel with expropriation for roads. A road, of course, may be a necessity. I can understand that and the people can understand it, but the parallel is not good in this case. Two national parks already exist in Nova Scotia and the third is hardly a necessity. To make it less of a necessity, the population in comparable areas are clamouring for this park and you say you will not establish it there.

Hon. Mr. Chrétien: No, now that there is this question of expropriation we have had protests. We have had more pressure from Nova Scotia than anywhere for this park in the Ship Harbour area. I receive many letters and the minister of the provincial Tourism department, the Honourable A. Garnet Brown, when he was a member of the legislature, was writing to me every month on the subject, asking when we would make a decision. He was also continually questioning the previous administration, when Mr. Smith was premier. I remember discussing it with Mr. Smith one day, and he was quite keen to move. I am very sorry if there was any misunderstanding about that, because I have changed many of the plans. There are now these 25 summer residents for whom I cannot satisfactorily cope with the situation. However, I think that what we are doing is sensible.

The Acting Chairman: Are there any other questions? I would entertain a motion to adjourn.

Senator Cameron: I would like the minister to keep three points in mind for discussion of general matters at the next hearing. Part of the controversy probably arises

from the fact that 11 parks have been created during a short period of time. Rightly or wrongly, however, there is a feeling abroad that the parks administration is not sufficiently concerned with the rights of people, as was stated by Senator Norrie.

My second point is that there is a feeling that the environmentalists are just running your department. This is the source of some of the friction and trouble. I suggest, therefore, that when we have the next discussion these matters be given a good deal of consideration.

Hon. Mr. Chrétien: The problem faced by my officers is the pressure on them from the conservationists. This pressure is very great and is reflected in every little move we make. If we decide to open up an area for a campsite, there are always the alarmists and extremists on the other side, known by some as the "econuts," who go overboard. This is a problem for my department because our mandate is conservation. The act provides for conservation and recreation, with conservation first. Those of our branch who work in the parks are subject to more pressure on that subject than on the other. They tend to be purists because they are very dedicated to the cause of conservation. I try to be moderate and that is why I backtracked so much in connection with Ship Harbour and I apparently would have to move a little more to please Senator Norrie, but, unfortunately, I do not believe I can.

Senator Carter: I should like to compliment the minister on the backtracking he has done. I suggest he read the speech delivered by Senator van Roggen in the Senate this afternoon, in which he will find pretty good justification for it.

Senator Goldenberg: Perhaps he should read my reply next week also.

The Acting Chairman: On behalf of the committee, I thank the minister very much indeed for the time he has taken and the trouble he has gone to in discussing these problems with us. May I at the same time thank your officials, who have been very attentive to us during all our hearings.

Senator Cameron: We are friendly enemies of the National Parks Branch.

Hon. Mr. Chrétien: No one takes these exchanges too personally. It is the type of lively debate that I love, and it is part of the democratic process that we have the fundamental right to disagree. However, this type of discussion and objection sometimes enables me to reply to extreme points of view which are against national parks and others which demand that we make all of Canada into a national park.

The committee adjourned.



FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

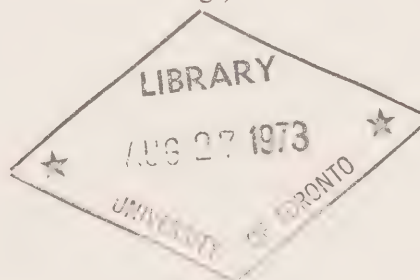
Issue No. 17

THURSDAY, JUNE 28, 1973

Ninth Proceedings on the Examination of the Document Intituled:

“Foreign Direct Investment in Canada.”

(Witnesses:—See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker—(20)

**Ex officio* members

(Quorum 5)

Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, May 16, 1973:

"The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider the document entitled "Foreign Direct Investment in Canada", tabled in the Senate on Monday, 15th May, 1972, and the subject-matter of any bill arising therefrom, in advance of such bill coming before the Senate, or any other matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

Minutes of Proceedings

Thursday, June 28, 1973
(17)

Pursuant to adjournment and notice, the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to examine and consider the document intituled: "Foreign Direct Investment in Canada."

Present: Honourable Senators Hayden (*Chairman*), Beaubien, Burchill, Connolly (*Ottawa West*), Cook, Flynn, Lang and Smith.—(8)

Present, but not of the Committee: Honourable Senators Bourget, Lafond and Lapointe.—(3)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Messrs. Charles Albert Poissant, C.A., and Robert J. Cowling, Consultants.

The following witnesses were heard:

Province of Quebec

Mr. Fernand Lalonde,
Deputy Minister,
Department of Financial Institutions, Companies
and Co-operatives

Mr. Robert DeCoster,
Deputy Minister,
Department of Industry and Commerce

Mr. Albert Marier
Economic Adviser

In attendance: Messrs. Roch Rioux, Counsel; Jean Houde, Adviser; Raymond Cantin, Department of Financial Institutions, Companies and Co-operatives; Remi Bujold, Department of Financial Institutions, Companies and Co-operatives

Toronto Stock Exchange

Mr. J. R. Kimber, Q.C.,
President of the Exchange

Mr. J. C. Barron,
former Chairman of the Board of Governors,
and President of Cassels, Blaikie & Co. Limited,
a member of the Exchange

Mr. R. T. Morgan,
Vice-Chairman of the Exchange, and
Vice-President of Wood, Gundy Limited,
a member of the Exchange

Mr. R. A. Donaldson,
of Blake, Cassels & Graydon,
General Counsel

At 12:15 p.m., the Committee adjourned to the call of the Chair.

ATTEST:

Georges A. Coderre
Clerk of the Committee

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Thursday, June 28, 1973.

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to give consideration to the document entitled "Foreign Direct Investment in Canada".

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are hearing first of all this morning a delegation from the Province of Quebec, which is headed by Mr. Fernand Lalonde, the Deputy Minister, Financial Institutions, companies and Cooperatives. I will ask him shortly to introduce his delegation, but for the moment I have asked Senator Connolly if he would take over for me for about 15 minutes, as I have very important business to attend to.

Senator John J. Connolly (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we continue our hearings with respect to the bill on direct foreign investment in Canada. This morning we have a delegation from the Province of Quebec, headed, as Senator Hayden said, by Mr. Fernand Lalonde, the Deputy Minister, Financial Institutions, Companies and Cooperatives. I may tell you that Mr. Lalonde's father was a member of Parliament for many years, and later became a judge. Mr. Lalonde himself is a distinguished member of the Montreal Bar; he is now in the public service. Perhaps, Mr. Lalonde, you would introduce your delegation.

Mr. Fernand Lalonde, Deputy Minister, Financial Institutions, Companies and Cooperatives: Mr. Chairman, the members of my delegation are, on my right, Mr. Robert DeCoster, Deputy Minister, Industry and commerce, and Mr. Andre Marier, Adviser in Economy, Executive Council, Quebec Province. Also with the delegation: Mr. Roch Rioux, Legal Advisor and Assistant Director, Legal Services, Financial Institutions, Mr. Jean Houde, Adviser to the Executive Council, Mr. Rémi Bujold, Assistant Private Secretary to Mr. William Tetley, Minister of financial Institutions, and Mr. Raymond Cantin, Assistant Deputy Minister, Financial Institutions.

Mr. Chairman, honourable Members of the Committee. First of all, I would like to thank you for the invitation you extended to the Quebec Government to make representations about Bill C-132. My Government has welcomed this opportunity more especially since it knows that the representatives of the Senate, this high assembly, will listen attentively to the concerns, of the provinces according to the traditional rules of the Constitution.

The Acting Chairman: Honourable senators, the electronic and interpretation equipment is being fixed. Mr.

Lalonde proposes to read his brief in French, in any event. I can direct your attention to the English version which is in the brief on the blue coloured pages. Is that satisfactory?

Hon. Senators: Agreed.

Mr. Lalonde: Honourable senators, I would like first to apologize for not having been able to get this brief into your hands prior to this time. We have had very short notice. I propose to read it in French, and you can follow the English translation next to the French version.

The traditional policy of Quebec with respect to foreign investment. Until very recently, Canadian opinion was largely favorable to direct foreign investment and its impact on the growth of our economy. Uneasiness actually arose in the mind of Canadians sometime after the Second World War with the marked increase of foreign penetration, especially in certain sectors of economy.

The Royal Commission on Canada's Economic Prospects (The Gordon Report) was the first to recommend a series of specific measures to contain foreign encroachment upon the Canadian economy. It was in 1958 that the Federal Government really began its practice of adding to its legislation provisions respecting foreigners (The Broadcasting Acts, the Corporations and Labour Unions Returns Act, the Tax Acts and the Insurance Acts).

However, for an in-depth analysis of the consequences of foreign control of a large sector of the Canadian economy, we must wait for the work of the Watkins Committee. Since that time, there was a marked increase in measures of control to protect Canadian interests or to curb foreign ingress, both at the federal level (creation of the Canada Development Corporation, special provisions included in the new Tax acts of 1971, and so forth) and at the provincial level (buying up of land, the publishing sector, financial institutions, and so forth). Following the report of the working group set up by the Federal Government to study foreign direct investment (The Gray Report) in 1972, the Federal Government considered for the first time general measures with the specific purpose of controlling foreign takeovers of Canadian firms*. *This bill, which was considerably amended at the beginning of 1973, suggests that a screening be made of all substantial foreign investments in Canada. Perhaps it is because of provincial representations that this new bill acknowledges the existence of economic and industrial objectives and has eased up the confidentiality rulings.

Generally speaking, the Québécois, and particularly the French Canadians, did not grasp the problems resulting from foreign penetration in quite the same light as other Canadians. No doubt they worried over the fact that their

economy should be dependent upon foreign initiatives but, for the last fifteen years, their reaction has stemmed much more from the need to exert direct control over their own economy than from the need to control by means of specific legislation or regulation the nature and significance of foreign interventions. It is largely in this perspective that the Québec Government's new policy of economic initiatives can be explained. The General Investment Corporation was created as early as 1962 with this in mind as were, in 1965, the Québec Mining Exploration Company (SOQUEM), the Québec Deposit and Investment Fund and, more recently, SIDEBEC, the Québec Petroleum Operations Company, (SOQUIP), the James Bay Development Corporation, the Québec Real Estate Development Corporation and The Real Estate Development Corporation (SODEVI). In addition, a few weeks ago, REXFOR became a crown corporation, also intended to support the initiatives of the Québec people.

Although important, these initiatives have not been sufficient to bring about any quick transformation of Québec's economy. As the Québec industrial structure is characterized by the predominance of manufacturing activities in economic sectors where productivity is low, where there is a big but largely unskilled labor force and where demand increased slowly, Québec's own private sector has been unable to absorb completely the large number of skilled workers arriving every year on the labor market. This situation called, in the short term, for an incentives policy designed to attract into Québec foreign industries using advanced techniques and with a potential for rapid growth. The opening of Québec's commercial offices abroad, tax exemptions and subsidies for establishment, among other means, were precisely aimed at this objective.

On the other hand, the government of Québec, following the lead of other Canadian governments, included in some of its laws certain provisions for maintaining in Québec the decision-making centers in sectors considered vital to the whole population, such as the book and publishing sectors for instance.

It is therefore this policy of intervention whose objective is to stimulate the initiative of Quebecers, coupled with the "open door" policy meant to attract foreign industries using advanced techniques into Québec which the Québec government put forward last year when presenting the Foreign Takeovers Review Act and, more recently, when the Foreign Investment Review Act (Bill C-132) was tabled.

You will find, as an Annex to this brief, a letter in French (together with an English translation), dated March 15th, 1973, addressed to the Hon. Mr. Gillespie by the Hon. William Tetley, minister of Financial Institutions.

While it is not its intention to make the distribution of powers between the two orders of government in economic matters, the sole criterion for evaluating Bill C-132, the Government of Québec nevertheless considers that this bill belongs to a field of jurisdiction which largely entails responsibilities which it has in fact always assumed to date. It is not a fact that Québec's powers in the development of natural resources (mines, water, land and forests), regional development, transportation and communications would be directly affected by the proposed legislation.

Therefore, would it be reasonable for the Government of Canada, by invoking the national interest, to exceed its jurisdictions and ignore this reality, thus derogating the spirit which prevailed at the time the British North America Act was elaborated.

In view of the measures it has taken to promote the participation of Québécois in their economy (and to combine foreign contributions and Québec's own initiatives through organizations such as the Québec Mining Exploration Company and the Québec Petroleum Operations Company) and, in conformity with its constitutional responsibilities, the Government of Québec contests the very concept of an undifferentiated Canadian reality which Bill C-132 considers as an accomplished fact, despite the reference in sub-section 2.2(e) to the objectives of the provinces' economic policies.

By virtue of its history and its geography, Canada is constituted of regional economies which, although connected by obvious links, are at varying stages of economic development, and have varying structural characteristics; therefore, their interests and needs with respect to foreign investment are diverse and often contradictory.

For instance, Western Canada, whose economy is still largely dependent on oil and cereal production, periodically complains about the concentration of manufacturing industries in Ontario, whose industrial structure is incomparably better balanced than Québec's and clearly dominates in production machinery (machines-tools) and durable consumer goods (automobiles). It might be said that through its dominant position in research activities and in several service sectors (finance, for instance) Ontario leads the Canadian economy. On the other hand, Québec dominates conventional sectors whose technology is already known and whose growth potential is rather low, such as food and clothing.

It has been observed that legislation indiscriminately applied to all parts of Canada often has contrasting effects from one region to another. Québec has already had the opportunity to publicly express its disagreement with an economic cycle policy which suits the needs of certain parts of the country, but is often unsuited to Québec where it restricts credit when that province's economy has just entered an expansion period. It must be recognized that it is not an easy task to apply the monetary policy in such a way as to suit the needs of every region, but the same cannot be true of sectorial policies regarding which Québec believes that by passing laws that take no account of regional differences, the needs and interests of one region are often, in fact, met to the detriment of the others.

The federal petroleum policy, for instance, was primarily to the advantage of Alberta by permitting the sale in Canada of crude petroleum from the West at a time when it could not be disposed of on the U.S. market. This policy, however, caused Québec to lose a very important Ontario market (Borden line).

The Federal Government's research policy similarly favoured Ontario which already greatly benefited by the U.S.-Canada automobile agreement.

On the other hand, over the past few years, Québec has made several requests for amendments to the Federal Government's transportation policy and that on feed grains. One could easily draw up a long list of policies

which, even if they are not meant to favour a particular region, nevertheless set up rules that actually suit one region better than the others.

Québec feels that Bill C-132 would consolidate the industrial structure of Canada as it now exists by applying quite freely criteria to measure the effects of an establishment upon the "level and nature of economic activity", to competition or productivity in Canada. For instance, these criteria could make it possible to oppose the setting up in Québec of a chemical products industry on the grounds that the existing Canadian industries are sufficient to meet the demand or that they need a larger market to reach optimum productivity lines. This policy, whose logical goal would be the most balanced industrial growth on a Canada-wide scale, could run counter to the transformation program for the industrial structure of Québec which the Government intends to achieve partly by promoting the establishment here of high-technology business enterprises. Actually, and with the economy of Québec such as it is, if we have to count on foreign contribution for a while still, at least to obtain certain types of technology, the Québec Government feels it is its privilege to decide, according to its own needs and priorities, the best time to do so.

The Government of Canada has, along those lines, tried for five years to maintain a policy of subsidies to industry without true connection with the local milieu, and has finally come to the conclusion that its programs ought to be defined again in terms of regional economies and as additions to the economic development policies put forward by the provincial governments.

Lastly, the implementation of a foreign investment review body, in accordance with the forms proposed under the bill, would imply that the Federal Government alone is responsible for the economic development of Canada; this in fact could hinder the efforts made by one province to develop its economy. This power the government gets through this bill, to grant or refuse permission to a foreign firm to set up business would be an important instrument of economic intervention allowing the Federal Government, for instance, to influence the award of a subsidy to one business enterprise in particular, to look for a Canadian investor for a business or partnership deal proposed by a foreign firm, to indicate possible suppliers to a foreign firm intending to set up business, to negotiate the minimum research work a foreign firm is expected to carry out in Canada, and so forth. To sum up, it would be a case of requiring the foreign firm to participate as much as possible in the economy of the country.

Only occasionally would this integration occur along the lines desirable for the economy of Québec since the agency would be acting according to factors which are largely related to an undifferentiated Canadian economy. On the other hand, it is to be expected that the close ties the agency would normally have to maintain with Canadian businessmen in its efforts to integrate foreign firms would help make the current industrial structure even stronger and somewhat depreciate the efforts made by Québec to transform its industrial structure.

Moreover, the Government of Québec has an additional reason to require that differentiated regional economies be acknowledged across Canada; we refer to the presence, in Québec, of the French-Canadian community. Because it has a specific culture determined by distinct

characteristics (language, values, traditions, customs, habits and so forth) and through its own institutions, the community will be productive at the economic level only insofar as it allows innovation and entrepreneurship among its people. These driving forces of modern economy, as mentioned in the Gray Report, can develop only in a favourable environment the existence of which is hardly compatible with the dependency resulting from large volumes of foreign investments.

Consequently, as much as it is essential for Canadian to assume greater control of their national economic milieu, it is necessary also that Québec's people and especially the French-Canadians, assume the leadership of their own economy. This is why the Government of Québec cannot accept a policy whose net result would be to consolidate the Canadian economy around the present industrial structure, and which would leave it only a field of action linked with the redistribution of activities from decision centers mainly outside Québec.

The Government of Québec feels that it is necessary for Québec's people, and especially for French-Canadians, to acquire greater control over their economy and deems it indispensable that any federal legislation on foreign investment should acknowledge explicitly its responsibility in that matter.

The Government of Québec has not yet adopted a definite position as regards the impact of foreign investment. An interdepartmental committee has been charged with the task of studying the whole question. Québec readily sees the disadvantages which derive from dependency on foreign investment. However, under the present circumstances involving the necessity to create employment on a short-term basis and particularly the necessity to accelerate the pace of transformation of its industrial structure, it considers that it must, on the one hand, set up institutions that will permit Québec's businesses to progress and innovate on their own initiative and, on the other hand, to be completely free to call, if necessary, on enterprises which lead the world in technical progress. Québec therefore considers it inopportune that the federal government gives itself a general application legislation governing foreign investment as such without formally acknowledging the need to secure the agreement of the provinces concerned.

But even disregarding this question of the timeliness of such general intervention, it remains that, to be acceptable to Québec, any bill should explicitly recognize the regional economies and respect provincial jurisdictions.

In practice, this means that specific references to regional economies should be made in each of the criteria used in reviewing foreign investment proposals. Québec, as you are aware, has already proposed specific amendments to that effect under Section 2.2(a).

Indeed, we have reason to be satisfied with the commitment of the federal government and the Minister who would eventually be responsible for carrying out the Act to consult the provincial governments and take into account the needs of regional economies. But consultation, especially if dependent on good will only, would be clearly insufficient if the federal government were to have the authority of deciding alone on the objectives, priorities and needs defined by the provincial governments themselves.

To take on real significance, the reference made for form's sake by the federal government, under Section 2.2(e), to "the industrial and economic policy objectives of the provincial governments" should be followed by a procedure for the participation of each government in the elaboration of policies or their application standards (regulations, for instance) and in the evaluation of actual cases. As the control of foreign investment has vital effects on a number of provincial policies and determines to a large extent the development of regional economies, it should therefore be the object of parity decisions between both levels of government.

The Chairman: Mr. Lalonde, we have been studying this bill for some time, and there are some questions that have been bothering us. For that reason I was wondering if you had had a legal opinion as to the validity of this legislation.

Mr. Lalonde: Not exactly. We have made what I would call preliminary studies with respect to the validity of the legislation, and we have serious doubts, and there are certain questions that we are asking ourselves, but we do not have a definite legal opinion.

The Chairman: Well, we have had legal opinion expressed here by the Department of Justice, and I think it is fair comment for us to say that we are not completely in agreement with the basis for such legal opinion. Once we have made that assumption—that there is doubt as to the validity of the legislation because of its intrusion into the provincial field in the manner in which this bill proposes it should intrude—don't you think it would be advisable that some attempt should be made to establish the validity in just such a manner as you are suggesting, that the particular province, in relation to the particular subject matter of the location of an industry, should be consulted and its agreement obtained before any steps are taken under this bill?

Mr. Lalonde: If you are referring to the examination of applications of foreign investments, I think that our conclusion—and here I would refer you to the last words of our brief—is that it should therefore be the object of parity decisions between both levels of government. Now some would call this the right of veto—and let us not be afraid of words—and that is what we mean. That is to say that before an application for investment in any given province is turned down, if the province concerned is favourable to the application, then the whole process should be stopped right there. That is our position.

The Chairman: You see, we have a situation now where the Maritimes have expressed a desire to opt out of this legislation. But, apart from that, we have what seems to me to be a major problem, and that is the question of validity. The only way we might even approach a solution to that problem is to give the power of veto to the province concerned. Do you think the situation is covered by the factors mentioned in clause 2.2(e) where it says:

the compatibility of the acquisition or establishment with national industrial and economic policies, taking into consideration industrial and economic policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the acquisition or establishment.

We put this question to the Province of Ontario, and while Ontario stressed in its brief that the province concerned should be the only one to articulate economic and industrial policy in relation to any provincial matter, it seems to me that that does not go far enough. You may articulate a policy from now until doomsday, but what is the point if there is no sanction?

Mr. Lalonde: We are in agreement with you, Mr. Chairman. I think it is at the level of decision that we have to intervene, and not only at the level of policy-making. This must be done when and where the decision is being made to turn down a proposed investment.

Senator Cook: Does your suggested amendment (2a) cover the situation to your satisfaction? In your letter to the minister you suggest the following amendment:

(2a) The effect of the acquisition or establishment on the level and nature of economic activity in each of the Canadian provinces with regard to economic differences existing between them, including employment.

Does that give you parity decisions?

Mr. Lalonde: No, not enough. We suggest that the reference to the economic differences existing between provinces be included in the five criteria or tests in clause 2.(2). That is one step. But then, if we want to be logical with ourselves, we have to accept that the appreciation of the application of those tests has to be made by the province and by the federal government also, but we should have the right of veto on the turning down of an application.

Senator Cook: Have you drafted an amendment to cover this situation?

Mr. Lalonde: It is difficult. We have tried to do this, but we appreciate that our position is a total or global one which may not be reflected by simply changing a few words here and there. The whole process would have to be changed.

Senator Flynn: Mr. Chairman, if I understand Quebec's position, the position that the province has just set forth in its brief, it is that you believe that the federal government, for the moment, should not intervene in this field?

Mr. Lalonde: You are right, Senator, especially at this moment. We are now taking this position. In the first place, it should be emphasized that the policy that we are setting forth here is not the policy of the Quebec Government concerning foreign investments. This is the subject of a study undertaken by an interdepartmental committee that will eventually make a report which will lead to a governmental decision. It is only Quebec's reaction to Bill C-132. It is quite possible that, in ten years time,—I do not know,—depending on the results of Quebec's policy and of the other elements on the transformation of Quebec's industrial structure, we might be in the same position as the more advanced provinces and that, in such a position, we could protect ourselves against foreign investments, against the misdeeds of foreign investors. But, this is not the case at present, and we anticipate that the implementation of Bill C-132, which does not differentiate between regional economies, will only establish and crystallize, by spreading the differences, the present industrial structure which is more beneficial to some regions than to others.

Senator Flynn: Globally, you adopt the attitude that, at the legislative jurisdiction level, except in very specialized fields which come under federal jurisdiction, the whole problem must first be settled by the provinces and the regions.

Mr. Lalonde: Well, if I understood Mr. Chairman properly just now, I believe he referred to a way of solving the constitutional problem by including a right of the provinces to express their opinion. This is probably an excellent suggestion and a very practical measure. If you refer simply to the constitutionality or to the constitutional validity of the bill in its present form, I have already stated that we have no formal legal opinion. We have made a few studies and it seems to us, for instance, that matters of property under civil law can be dangerously affected by the implementation of this act if it is passed in its present form. It also seems to us that one of the supports of research, according to my perusal of the proceedings of this Committee, the federal government, to test the validity of the question of unnaturalized persons, is quite drawn out because, I believe it is paragraph 25 of section 91 which gives the federal government the responsibility of naturalizing unnaturalized persons, but to go so far as to urbanize investments, or to personify investments by referring to unnaturalized persons, I believe we have serious doubts. These are the questions we are wondering about at the moment.

Senator Flynn: Representatives of the Department of Justice who appeared before us did not pass judgment on this argument, and they kept to very vague references to peace, order and good government, and there is no doubt at present that a bill of this nature, among others, could be passed by a provincial legislature and would not be judged outside its jurisdiction. You refer to a bill which has been tabled in the Quebec Legislature?

Mr. Lalonde: If you refer to page 5 of our brief, at the top of the page, in the French version, we emphasize the presentation on the examination of take-over by foreigners, it is the bill which preceded Bill C-132 in Canada.

Senator Flynn: Good! It is in relation to this that you wrote the letter, Mr. Tetley's letter, about the present bill?

Mr. Lalonde: Yes, the one of March 15; it is about this bill which had been tabled in the House.

Senator Flynn: You say that the least harm would come by giving a right to vote to the provincial governments in the case where a request would or should be rejected in the opinion of the responsible minister?

The Chairman: Senator Flynn, in view of your line of questioning, two points in the presentation so far bother me. When the word "regional" is used by you, Mr. Lalonde, should I consider that to mean "provincial?"

Mr. Lalonde: Not necessarily, but we thought that we must be very careful in determining whether two provinces constitute a region. We can state, however, that we consider that the Province of Quebec constitutes a region.

The Chairman: Yes.

Senator Flynn: By itself.

Mr. Lalonde: By itself. It might be, however, that two other provinces have the same economic problems and

may be considered to be a region as far as we are concerned.

The Chairman: Yes, but if Quebec is affected by any proposal made to the minister in connection with the possible location of an industry and the province has the right of veto, then no matter what takes place in the other province you would not be affected; is that not correct?

Senator Connolly: It might be easier for the witness if you gave him an example of what you mean, Mr. Chairman.

The Chairman: I suggest that there might be an application for the establishment of a new business in the Province of Quebec. The province, having the authority of agreee, does so, but the federal authority rejects the application. There then develops under the provisions of this bill a meeting in court unless one or the other backs down. Is that not right?

Mr. Lalonde: Do you mean under the provisions of the bill as it is drafted?

The Chairman: Yes, under the bill as it stands if the province were not to accept a decision it would result in a confrontation in court.

Senator Flynn: it may mean that.

The Chairman: As the only constitutional resort.

Mr. Lalonde: Yes, it may mean that. I have not seen a specific reference to such a situation, of a province not being of the same opinion as the federal authority and going to court.

Senator Connolly: But it may be a confrontation, whether it goes to court or not.

The Chairman: The bill does not give you the authority.

Mr. Lalonde: No.

The Chairman: Therefore, if this were your position, the only means of settling it would be resort to court. I am forgetting political considerations for the moment and even the consultative process does not always work out satisfactorily. So you either need a sanction in the bill to give Quebec the right to say no effectively, or you accept the bill as it is and in order to assert your rights you must go to court. Is that not about the position in which you find yourself?

Mr. Lalonde: Yes, but it is even weaker than that, because the only basis we have in court is a constitutional fight or the application of the provisions as they stand now.

Senator Connolly: To the specific application.

The Chairman: But no one can say what the decision of the court would be.

Mr. Lalonde: No.

The Chairman: I agree with you on that point. That is, therefore, all the more reason for taking care of the problem in the one place we can make sure you have the right, which is in this bill.

Mr. Lalonde: Yes, that is our positive position.

Senator Connolly: Would the desired result be achieved if in clause 2(2)(e) the phrase "veto of a decision that might be made by the review authority or by the minister" were added?

Mr. Lalonde: I would be afraid that if the right of veto were to apply only in clause 2(2)(e) it would not be sufficient. Because I am not sure whether the minister would have to take into account five tests, or one of the five, or two or three. There is perhaps a balance of inconvenience in his decision. One would come down to (e), and there may not be any problem.

The Chairman: These are exclusive factors. It says, "factors to be taken into account" in the assessment the minister makes. The departmental representatives have agreed that they are exclusive, which means that the minister must operate within these factors. That includes them all.

If the provincial authority in Quebec has enunciated—using the language of the statute—a policy, industrial or economic, in relation to the subject matter that the minister is considering, all that this bill says is that the minister must take that into account. That is pretty weak. If you add that he must accept the enunciation, that would be a stronger position.

Mr. Lalonde: Yes, it would be a stronger position. But if we just say "accept," the decision would still rest only with the federal government; and that is what we cannot accept.

The Chairman: It would not give you the autonomy that you want.

Mr. Lalonde: No.

Senator Beaubien: Is it not the Quebec position that they would like to opt out completely from the effects of the bill?

Senator Flynn: Yes.

The Chairman: I did not understand that they wished to go that far.

Mr. Lalonde: Opting out is one way of solving this problem, but it looks more negative than positive. We thought that we would have a positive decision.

With regard to opting out, we have not examined this proposal which was made, I think, to this committee. If this is an acceptable way, we would like the opportunity of looking at it more closely.

Senator Flynn: At page 12 it says:

Quebec therefore considers it inopportune that the federal government gives itself a general application legislation governing foreign investment as such without formally acknowledging the need to secure the agreement of the provinces concerned.

That does not mean veto; it means to have the agreement of the province prior to introducing legislation. That is my interpretation of it.

Mr. Robert DeCoster (Deputy Minister, Department of Industry, Trade and Commerce): I think you must make a distinction when exercising the right of veto. One can apply the veto, which should be applied in concrete cases . . .

Senator Flynn: Yes, I agree.

Mr. DeCoster: . . . when the assessment must be made and not when policies are enunciated, not on the content of the bill itself. We are seeking the right of veto when concrete cases must be assessed and when, in short, a ministerial decision must be made.

Senator Flynn: I understand that, it is the second stage of your attitudes; in the first stage, you say that the government should not legislate now.

Mr. DeCoster: Yes, I agree.

Senator Flynn: Before legislating, it should consult the provinces. This is what I am reading on page 14.

Mr. DeCoster: This is it, Senator, there is surely a first stage. The first stage is to introduce some legislation.

Senator Flynn: In other words, you wish the federal Parliament would not adopt the bill.

Mr. Lalonde: Taking into account our own purposes, yes, for the time being we would like them to reject the bill, but without taking a final stand . . .

Senator Flynn: Without taking a final stand on the question of legislative jurisdiction, of constitutionality.

Mr. DeCoster: Or even the opportunity of establishing foreign investment policies.

The Chairman: I made a suggestion, when the Ontario representatives were before us, the possibly (e) should be amended to require the agreement or approval of the province that is affected by whatever matter the minister considers. The word "veto" is an irritating word, or it could be regarded as an irritating word. If there must be agreement with the province that is affected—the province affected must approve, otherwise the minister cannot exercise his authority—would that not give you what you ask for?

Mr. Lalonde: I am not sure if the end result would be that the minister would then have to assess the proposed investment in the same direction. In other words, if the province involved would say, "This proposed investment is favourable to our economic policy," et cetera, then what would happen to the other four factors? Could the minister be at liberty to turn down the proposed investment or the application because of any of the other factors? That is my question.

The Chairman: I think we could avoid trying to reach any decision on which only the court can rule. WE could avoid that by requiring that in any case where the rights of a province, in its economic or industrial objectives, are affected, notwithstanding any of the other factors—

Mr. Lalonde: Then it would be up to the court. Yes, I see your point.

The Chairman: —there must be approval from that province. That would seem to be your concern. There might be some other ground or factor on which the minister might decide. He could exercise authority. What bothers me is the fact that if, included in the proposal he is looking at, is something which affects the Province of Quebec, I find it difficult to accept that the minister could say, "I am applying my ruling on the basis of subsection (2)(a), (b) or (c)," and ignore (e). These are all factors that he must consider.

You cannot have a question before the minister, under this bill, that does not affect some province. I am excluding the territories. The provinces are essentially bound up in decision-making; at least, some province is.

If it is the Province of Quebec, I do not think we can say in this bill, by way of amendment, that the Province of Quebec must be consulted on anything that affects it. I think we must generalize and say that agreement must be obtained from the province that is concerned by this particular matter.

Senator Connolly: In other words, you would introduce, at the beginning of (e), if you are going to change it to have that effect, the words "in any event"?

The Chairman: Yes.

Senator Beaubien: Suppose that I am a non-eligible person, and I want to make a big investment in Quebec that will amount to several million dollars. Isn't the shoe on the other foot? Would I not have to obtain the approval of the federal government, if I am going to put out a big bond issue? The veto of the province against the ruling of the federal government would not cover that, would it? You would have to get federal approval or the scheme would not go through. Is that not right?

The Chairman: Not in the form that we have been discussing, of a possible amendment of the factors. If one of the factors is that the minister must secure the agreement of the province that is affected by this proposal, and he secures it—

Senator Beaubien: Does the minister have to say yes?

Senator Flynn: He can say nothing, and that is good enough under this act.

The Chairman: They must go that far.

Senator Beaubien: If he says nothing, that is good enough?

Senator Flynn: Yes. He could say nothing, because he has not secured the agreement of the province concerned.

The Chairman: If he says nothing, then, at the end of that period of time, it is approved.

Senator Flynn: That is what I say.

Senator Beaubien: As a corporate lawyer, Mr. Chairman, your feeling is that it would be approved, even though, say, there is \$50 million on the line, if the federal government says nothing?

The Chairman: Yes.

Senator Flynn: It could say nothing, if it does not get the agreement of the province.

Senator Cook: What is the point in having the minister there at all?

Senator Connolly: Let us remember that what we are talking about in this instance is a rejection by the federal authority, is it not?

The Chairman: That is right.

Senator Connolly: The application is made to the board of review set up under this bill, and the federal authority

turns it down. Before it can turn down the application definitively—

Senator Beaubien: It can do one of two things: it can approve it, or it can turn it down. The chairman now says that it can do nothing. Is that so?

Senator Connolly: Yes.

Senator Beaubien: And that means that it is approved?

The Chairman: Under the bill, as it is presently drawn, if the board of review receives a notice which is passed on to the minister and the minister does nothing within the stated period of time, then that application is automatically approved.

Senator Flynn: That is covered by clause 13 of the bill.

The Chairman: The minister's silence is equivalent to approval.

Senator Connolly: Perhaps we could put it this way, for the benefit of Senator Beaubien. I think the difficulty arises in that we are now talking about a situation where clause 2(2)(e) has been amended and where, to use the offensive word, any province would have a veto. We are also talking about an application which would be rejected by the review board, but that rejection would not be effective unless the consent of the province to the rejection was given. That is the situation that we are really describing. If the acceptance of the rejection by the province persists and 90 days elapses, then the investment can go ahead.

The Chairman: Yes.

Senator Beaubien: In other words, this would nullify the adverse ruling of the province?

Senator Flynn: Yes.

Mr. Lalonde: Mr. Chairman, if I may, we have to be careful in this respect. The right to veto should be exercised before the decision goes to the cabinet, because I do not think there is any way of vetoing a cabinet decision. It would have to be vetoed before it went to cabinet.

Senator Flynn: It should be vetoed at the stage when the minister has to make a recommendation to the Governor in Council.

Mr. Lalonde: Yes.

Senator Connolly: I do not think you would really be concerned in that respect. If the five tests, are not complied with, I do not see how the minister could take the proposal to cabinet. The minister has to take into consideration all five tests in clause 2(2). If the fifth test is not complied with—namely, the consent of the province, any province—then, if the minister does go to cabinet, he is acting beyond his powers.

Senator Flynn: It all depends on whether the amendment should be made there or elsewhere.

Senator Connolly: That is true.

Senator Flynn: The agreement of the province, if it is to be decisive, should be incorporated in a special clause of the bill and not merely as a factor which the minister must take into consideration.

The Chairman: I am inclined to agree with you, Senator Flynn. One way of doing that would be to have a separate clause in the bill which would provide that the minister shall not have the right to make a recommendation unless he has the consent of the province.

Senator Flynn: The prior consent of the province.

The Chairman: Yes, unless he has the prior consent of the province affected.

Senator Flynn: The word "affected" would have to be defined.

The Chairman: Well, "affected" may not be the best word. Perhaps it should read, "... the province concerned ...", or it might read, "... the province in which the proposed enterprise is to be located ..." That would spell it right out.

Senator Connolly: From a purely technical point of view, what you would be doing then would be to remove clause 2(2)(e) and add another clause to the bill.

The Chairman: No. I would amend clause 2(2)(e) by requiring the agreement of the province.

Senator Connolly: Along the lines you just described?

The Chairman: Yes. I would then add a separate clause which would provide that the minister may not make a recommendation without the consent of the province in which the enterprise is to be located.

Senator Cook: It seems to me, Mr. Chairman, that it would be far, far better to forget the bill. In these circumstances we would not only be making a bad law but also an ineffective one, because once you add that, the act would not be worth the paper it is written on.

Senator Flynn: You are probably right.

Senator Beaubien: Mr. Chairman, do you not think that the bill should insist that the minister will approve if the province persists? I think this is terribly important. Don't forget that the government stopped the Home Oil deal. There was no law governing that; it just refused it. If it is a big investment, with a lot of money involved, and there is a law which could stop it, then you should get that approval.

The Chairman: Senator Beaubien, if you go that far you might as well scrap the bill.

Senator Beaubien: Well, I think that probably should be done anyway.

Senator Cook: That is a good idea.

Senator Burchill: Mr. Chairman, even with that amendment, I can see where a whole lot of complications might arise. For instance, if one province said no, they may have particular reasons for doing so. The market may be limited, for instance, with respect to one particular industry and they would not want a similar industry introduced to the province. They may be struggling with the industry that they already have. However, another province may want that industry and be willing to accept it, which would result in that industry going into competition with the industry in the province which refused it. I can see all kinds of complications such as that.

The Chairman: What is wrong with that?

Senator Burchill: Will, there are all kinds of complications as far as protecting the industry in the province which refused it.

The Chairman: Are we going to carry control so far that we will iron out the problems of competition.

Senator Burchill: You can scrap the whole bill as far as I am concerned, Mr. chairman.

Senator Flynn: Nothing prevents a province presently from legislating in this area.

The Chairman: I would have thought that there is a function in this legislation as long as we do not trample on the rights of any province and its view as to what the economic policy should be for that province.

Senator Flynn: As far as the federal government is concerned, it seems to me, as has been mentioned earlier, that it should proceed by way of incentive at the taxation level, rather than trying to apply a control which cannot meet the opposite views of all of the regions of Canada and of the various provinces. It seems to me, with the ingredient of the agreement of the province, or even consultation, because consultation should be meaningful, that we are creating a Tower of Babel.

Senator Cook: I think the brief raises a very interesting point, and that is the question of timing. The brief says that it may not be opportune. I think the government would be well advised to continue to consider this problem with provincial representatives, together with the federal authorities, and not rely on the Gray Report as the Bible.

The Chairman: Senator Cook, I have heard the Gray Report called a lot of things, but I have never heard of it referred to as the Bible.

Senator Cook: I would call it the Old Testament!

Senator Burchill: Might I ask a question? Mr. Lalonde, has this brief been presented to the committee of the other place?

Mr. Lalonde: No, senator, it has not. I do not want to leave the impression that we have not been invited to present a brief to the House of Commons committee. We were invited to do so, but it was decided that we would make our representations to this committee.

The Chairman: You are in a very good place.

Mr. Lalonde: I should add that this brief is based on Mr. Pelletier's letter. There is nothing new in the brief.

Senator Flynn: You go further.

Mr. Lalonde: That letter went to Mr. Gillespie, so he is aware of our position.

Senator Lapointe: When will your report on the impact of investment in the Province of Quebec be published? Will it be in several months, in a year or two?

Mr. Lalonde: If you will allow me, madam, I do not think we can talk in terms of one or two years; it could, however, take some months. Maybe we could ask Mr. Marier, who is working intensely on the report.

Mr. Andre Marier (Economic Advisor of the Executive Board of the Province of Quebec): First of all, it is an interdepartmental committee; it is not a report that will be published, it is an internal report. If later on we want to make it a public report, it will be left to the discretion of the Cabinet ministers.

Senator Flynn: That is another element indicating that the situation is not ready for a decision either at the provincial levels, and this supports your position that the time has not come for federal legislation.

Mr. Marier: As far as we are concerned, as is specified in the document, our priorities would be to deal first with employment, then with the transformation of the industrial structure.

Senator Flynn: But I think that Mr. Lalonde must agree with the conclusion concerning short-term investments, with the advisability of having the federal government adopt this Act which, as far as you are concerned, is not advisable because you have something in view, although you are also studying its impact and defining a policy which could conflict directly with this legislation?

Mr. DeCoster: May be we should add that we presently find it inadvisable to introduce general legislation, not only because we are studying the impact of these foreign investments, but also because of the industrial promotion effort which is necessary now to correct certain weaknesses in the industrial structure—some means have been mentioned in provincial legislation and which encourage us to do some promotion abroad to attract foreign investments, the technique which would bring foreign investments, in order to adopt a more rational structure which would eliminate some anomalies—unemployment, fluctuations—some vulnerability in the case of fluctuations of national policy and so on.

Senator Flynn: That is what I was thinking of when I said you had something in view.

Mr. Marier: Yes, we do not find it inadvisable and neither do we reject completely the various possibilities which the future has in store.

Senator Flynn: You do not know, it is not provided for?

Mr. Marier: No, we would not reject the concept.

Senator Flynn: No.

Mr. Lalonde: If it were in the Act, we would not reject it.

Senator Flynn: There is no possibility of any province opting out. You have used this expression as far as the Province of New Brunswick is concerned, but there is no opting out. If the bill is passed, it will be applicable.

The Chairman: I think we have got over that hurdle by recognizing that the only effective way of securing your position, as you have stated, is by making some provision in the bill; otherwise you have to take the risks that are attendant on going to court.

Is this a fair statement, Mr. Lalonde, that the essential purpose, or the core, of your presentation so far has been, just reading from your brief, the need to secure the agreement of the provinces concerned? This is what we have been discussing. Let us assume that the bill is put in a

form in which this requirement is met. Is there any other objection that you have to the bill?

Mr. Lalonde: We have not gone into the details of the bill, such as whether the definition of "non-eligible person" or "Canadian business", and so on, are correct, accurate or effective. We thought that our approach was a global one, and that we first had to make that point. Should the bill be amended in the way we suggest, then I think there might be some other improvements. We have read representations made by different bodies, but we are not able to say whether we support one or the other.

The Chairman: Let me put this to you. In our discussions here, where the minister makes a decision in the sense that he has decided to say no to the proposal, and he is within the scope of the bill as we might amend it to meet the situation you have been talking about, the view has been expressed that those reasons of the minister should be subject to appeal. First of all, they should be published, and they should be subject to appeal in the Federal Court.

Senator Flynn: Before they are submitted to the Governor in Council.

The Chairman: This is before the minister makes a recommendation to the Governor in Council. In other words, the rights of people who may be affected by the no turn on whether the minister has made a proper interpretation of section 2(2). That may be a question of law, or a mixed question of law and fact. Surely, it is essential to our system of administration of justice that somebody who is hurt in that fashion should have a right to test whether the minister has acted within the scope of his authority or not?

Mr. Lalonde: Personally, I tend to agree with you, Mr. Chairman, that the right of appeal might improve this bill. But for the purposes of our representations today, I would say that this right of appeal of a foreign company would be exercised of its own volition, and that would be in a case where the province would agree with the minister's decision to reject the application. Then a right of appeal *per se* is an improvement. However, that is my personal opinion.

The Chairman: If the minister says no and the province says no, those are circumstances under which the applicant may want to test the decision. If there is a decision that the minister's no is in excess of his authority, in that case the provincial no might be equally ineffective.

Mr. Lalonde: I agree, but on the general question of having a good, effective process of law, I think the right of appeal may be preferable.

Senator Cook: I gather that, apart from all other merits in your present state of planning you do not think this is the right time for this bill to be brought forward anyway.

Mr. Lalonde: You are right, sir.

Senator Flynn: In practice, what is suggested is that the federal government should consult the provinces before pushing this legislation further. Secondly, if this is not done, if we had a requirement in the bill making compulsory the agreement of the province to any negative decision affecting one province, then it would be a lesser evil. The only thing that I would add to your statement is that I would not want to imply that there was no information

before that. There was some which might lead to the additional interpretation.

The Chairman: Are there any other questions?

Senator Flynn: On the point raised by Senator Cook, that if we are to insert the requirement of the agreement of the province in the bill, we might as well scrap it, it may be a good point, but I suggest that if there is some merit in the bill we should be making this amendment and experimenting with the bill and maybe draw some conclusions after a while. I think the experiment might be worth having—with this veto given to the provinces. We could see how it would work out for a few years, anyway.

The Chairman: That is a viewpoint expressed in Ontario and in some other provinces. That is a new concept and its purpose is laudible. If you remove the inequities and give authority to the provinces in certain instances we are talking about, there is still merit in the bill and it may produce benefit in other provinces. A requirement that there must be the approval of the province affected by the proposal, should not destroy the bill, because the bill may be very beneficial in many aspects. I do not understand, Mr. Lalonde, your position to be that the bill should be scrapped. You are not going that far?

Senator Flynn: He did not say that; he said it could be postponed.

Mr. Lalonde: In the status of our studies now in respect to foreign investment, and the effect of foreign investment in Quebec, we are not in a position to say that this bill is all wrong or all bad. We say that at this time, for Quebec, it is not opportune.

Senator Connolly: Assuming, for the sake of argument, that clause 2(2)(e) is amended along the lines of our discussion this morning, and that a right of appeal, from the decision that ultimately comes down, is granted in the bill, I would suppose that the witnesses would agree that the federal authority, in matters of this kind which might very well touch the national interest, would have a responsibility to intervene in this area, if things were developing in a way that would be against the national interest. After all, we are a federal state, and the presupposition that I inject to you is that there should be interprovincial consultation or consideration.

The Chairman: Senator Connolly, the scheme of the bill is not on that basis—that is, “is the proposal against the national interest?”

Senator Connolly: Perhaps I should have put it the other way.

The Chairman: This is the test in the Australian legislation.

Senator Connolly: That is right.

The Chairman: We put it to the Ontario and other representatives, as to whether they thought there should be a change from a test of “significant benefit” to one of being “against the national interest”. We met with very strong resistance, and the very people who were opposed to the change in language, at the same time thought that the words “significant benefit” were very confusing and difficult to interpret. I certainly agree with that, but maybe that is better, to leave it that way.

Senator Flynn: Except in the neutral area that we explored, where it is impossible to determine any benefit or detriment at all.

The Chairman: We have amendments about that.

Senator Connolly: All I want to say is that we could have cases in which the federal authority would have the responsibility to act in the national interest. It is difficult for me to say it, without saying “in the event that there might be damage to the national interest”—to put it in the negative way, the way the Australian legislation does it. In a federal state, you are bound at times to have situations where the federal authority has to act in the interest of the entire country.

The Chairman: You are proposing something that is not necessarily based on this bill at all. It is a suggestion as to circumstances under which the federal authority might intervene for the protection of the national interest. That is a different principle from the principle in this bill.

Senator Connolly: Far be it from me to widen the discussion, but it seems to me that it is almost certain to be a point that will be raised when we hear the minister, probably.

Senator Flynn: Of course, it is quite obvious that the federal government wants to have the last word, there is no doubt about that. Whether it is necessary or not at this time is another question. When he speaks of national emergency—resulting from a large investment in Canada—

Senator Connolly: That is the kind of thing I was thinking of.

The Chairman: That would be a case for action by the federal authority on the basis of some authority it has, quite apart from this bill.

Senator Flynn: It could bring in a bill especially for such a case, as it threatened to do with the Dennison Mines case.

The Chairman: Are there any other questions?

Now, Mr. Lalonde, as there are no other questions, there is one question I should put to you and your representatives. Is there anything more that you would like to add, anything that you feel needs to be stressed further, before we conclude?

Mr. DeCoster: Honourable senators, there may be one thing I would like to emphasize, that we should not discourage completely, altogether, foreign investments. In this respect, I would like to bring to your attention the violent reaction of a group of German industrialists who came to Canada recently on the invitation of the federal government. There were 25 of them and some represented industries with 166,000 and 185,000 employees. Most of these companies were in high technology fields. Their reaction to the bill was violent, so much so that they returned to Germany with what they said to us was a firm intention of not investing in Canada if this legislation in its present form were passed.

The Chairman: I do not think you can say that the principle of this bill is against foreign investment in Canada. It is not.

Mr. DeCoster: I am not saying that, sir.

The Chairman: It is for the control of foreign investment and the test of "significant benefit".

Mr. DeCoster: I can understand that, sir. I was only trying to give the reaction of these people to the present bill.

Senator Connolly: Did they say specifically what it was that took them home—other than an aeroplane? Did they have anything specific?

Mr. DeCoster: No, except that they have been specific, for instance, in that they refused to go through the process of examination as it is now. They refused to enter into a long study and long negotiations, without knowing what the plan would be like under this bill.

Senator Connolly: In other words, they wanted the decision to be based purely on economic grounds, rather than on a permissive ground such as is provided by this bill.

Senator Cook: If an industry like this enters into negotiations with the government and is required to do this, that and the other thing, before it is allowed in, it might very well say to itself that five years from now the whole thing may be altogether ridiculous.

The Chairman: We have been thinking about that point, Senator Cook, and a suggestion was made by some of the groups here that there should be a method or summary procedure under which you could, within a limited period of time, get advance rulings which would be subject to appeal to the court. That would meet the question and it would not necessarily mean a long delay in reaching a decision. You could come before you make a decision to invest.

Senator Cook: I was touching on another point, Mr. Chairman. I was saying that we are asking them to give undertakings which they may feel, with the change in technology and the rest of it five years from now, will be the wrong thing to do. But before they come in here they are asked by the government to commit themselves to do this.

The Chairman: They do not have to.

Senator Cook: They do unless they stay out.

Senator Connolly: Did Mr. DeCoster talk to these people from Germany?

Mr. DeCoster: Yes.

Senator Connolly: If there had been a provision in the bill for summary procedure and advance rulings, do you think that still would have turned them off?

Mr. DeCoster: It would most certainly have been an improvement, but it would not necessarily have satisfied them.

Senator Flynn: What is frightening to any foreign investor is that after his investment has been approved he cannot sell to a non-eligible person without first going through the process all over again.

The Chairman: We have that in mind, too, senator.

Senator Flynn: But at this stage it is very frightening for any foreign investor.

The Chairman: The view has been expressed here, and has made some impression on the committee, that you should only have to go through the process once of establishing a significant benefit. Then, if you want to expand or extend your holdings—

Senator Connolly: Or sell.

The Chairman: —you should have the right to do that without having to go back and go through the wringer of significant benefit a second time, which does seem to be a good idea in the interests of expedition, et cetera.

Senator Connolly: In other words, if one non-eligible person qualifies and wants to sell to another non-eligible person, he does not have to take even the summary procedure.

The Chairman: Have you anything further, Mr. Lalonde?

Mr. Lalonde: No, Mr. Chairman, except to thank you very much for hearing our views.

The Chairman: Thank you for coming and for the ideas you have given us.

The Chairman: Honourable senators, we have before us now the Toronto Stock Exchange. Mr. Kimber is the head of the delegation and I take it he will make whatever opening statement there is. Will you present your delegation to us, Mr. Kimber?

Mr. J. R. Kimber, Q.C., President Toronto Stock Exchange: On my extreme right, honourable senators, is Mr. Christopher Barron, the immediate past Chairman of our Board of Governors. I might say the thinking in our brief was developed in his regime at the exchange.

Next is Mr. R. T. Morgan, Vice-Chairman of the Board, and he is chairman of what we term our legislative committee which looks at various items of this nature.

Immediately beside me is Mr. Donaldson, our counsel from the Blake law firm in Toronto.

Perhaps I should mention one point in connection with our sister exchange in Montreal. I understand it has not and will not be submitting a brief; but we have had discussions with them, and I understand that they have filed with the clerk of the committee a letter saying that they have reviewed our brief and concur in the representations we are making. So two of the exchanges in Canada are in agreement with what is being said in this brief.

The brief was, I believe, filed some time ago, and the French version of the brief was filed this morning. There was an addendum to our brief prepared at the last moment, raising a new aspect of the matter. The French copy of that addendum has already been filed, and I understand that the English version is being filed right at the moment.

Honourable senators, our principal concern, as you will appreciate, is that for the secondary market in the trading of securities, particularly the trading of equity securities which are very much in point in discussing control.

Senator Connolly: You are not going to read the brief, I take it.

Mr. Kimber: No, I have an opening statement which I will read, if I may. As I was indicating, our main concern is with the secondary market in the trading of equity securities, but our brief contains a number of comments of a rather detailed nature which we think will help to make the legislation work better.

Honourable senators, we at the Toronto Stock Exchange support the objectives of the proposed legislation regarding foreign investment in Canada. The recommendations we make are consistent with the objectives of the legislation, in our view. Our existing financial institutions, together with the profusion of new institutions, have emerged as a powerful instrument for collecting Canadian savings. Canadians in recent years have shown a willingness to invest in new Canadian businesses, and this has destroyed the myth that Canadians are afraid to take risks and invest in their own country.

The Canadian market has been successful in underwriting new issues of established, large and publicly-owned Canadian companies. A recent dramatic example of the strength of the Canadian capital market has been the issue by the Hudson's Bay Company of \$100 million of convertible debentures. This was done during a period of a very down market. These securities were not sold in the United States. They were not qualified for sale in the United States. They were well placed all across Canada.

We are now confident that, with maturity of our financial institutions, the expanding savings base of Canadians and the increased maturity and liquidity of our capital market, Canada has reached the threshold where it can be more selective in the way in which non-resident capital has been permitted to come into the country, and Canadians can be much more prudent about the price which they pay for non-resident capital. We do not rule out, however, the desirability of having non-resident capital flowing into our country, provided it is on terms which are consistent with the objectives of Canada and its citizens.

We submit that the legislation will work best if foreign portfolio investors, who do not represent any threat to Canadian control, are able to ascertain quickly and easily that they are free to invest; otherwise they are likely to lose interest in Canadian investment. Therefore we believe that every effort should be made to permit foreign investment which does not threaten the effective control of Canadian ventures. We feel it is important, gentlemen, to establish a clear difference between portfolio investment and direct investment—and I am sure you have heard those two words used many times in your hearings.

The Chairman: We certainly have.

Mr. Kimber: True portfolio investment is purely passive in relation to questions of control and management. Direct investment uses its shares for the purpose of control and actual involvement in the management affairs of the company. It is our view that non-resident portfolio investment should be encouraged and not discouraged.

The Chairman: If you will stop right there for a moment, does that mean you would favour exemption of non-resident portfolio investment from the provisions of this bill?

Mr. Kimber: Mr. Chairman, I can see a problem with the definition of what is or what is not portfolio investment. We have some suggestions along this line. But portfolio investment, if it was clearly distinguishable, I think should be exempt from the legislation. It does not carry any threat.

The Chairman: And pension fund investment?

Mr. Kimber: Well, pension funds are perhaps the most outstanding example of portfolio investment, so I would say yes to your question. In fact, what portfolio investment does is simply this, it adds to the pool of capital in Canada which is subject to the control of Canadians. It comes in; the corporation is Canadian controlled; and if you can add more capital to the pool, subject to Canadian control, it is a good thing for Canada.

We see two fundamental problems in relation to the bill and its interpretation. These are the interpretations placed on the meaning of "non-eligible person" and "acquisition of control". The legislation presents the corporate investor, in fact, with a two-edged sword. He must first ascertain that it does not in fact carry the status of a non-eligible person. If it does, then it must ensure that the acquisition made by it will not be deemed to be acquisition of control. To illustrate our concern, it is our view that the term "non-eligible person" is not sufficiently broad or explicit to cover unincorporated entities such as mutual funds, pension funds, estates or real estate investment trusts.

Senator Connolly: I am sorry, but would you repeat that last sentence?

Mr. Kimber: I am sorry, I am probably speaking too quickly.

Senator Connolly: It sounds like a very important point.

Mr. Kimber: We feel that the legislation is not specific enough or is not sufficiently broad to cover unincorporated entities. Here we are referring to such things as mutual fund trusts, pension funds, estates, and that new financial creature which has come forward recently, the real estate investment trust. Those trusts are now listed on the Toronto Stock Exchange. We have a separate category for them. They have become a very interesting investment vehicle for Canadians.

The Chairman: And you suggest that they should be covered by the bill?

Mr. Kimber: Yes, I think so, sir. I feel that the bill has not done that. I would think that the intention and philosophy of the bill would be to cover them, but it has not covered them. We make some suggestions and modifications which we think will assist in the interpretation of definitions.

Now, our recommendation is, first, that with non-eligible persons, we are concerned with the effect of the definition of non-eligible persons which could deem a large number of truly Canadian companies to be non-eligible.

The Chairman: Like the CPR?

Mr. Kimber: Yes, that could be one. We think that would be a mistake because it might prevent the CPR from enlarging its activities by going into other enterprises, and

it might also have the effect of discouraging non-resident portfolio investors from buying shares in CPR.

The Chairman: How do you propose the exemption should be applied? Do you have any particular language in mind?

Mr. Kimber: We have suggested in our brief that there should be a change in the legislation.

Senator Connolly: Is that on page 11?

Mr. Kimber: That is correct. If I may read from our recommendation, and then come back and discuss it further:

We would propose to exempt from the classification of non-eligible persons corporations, the shares of which are publicly traded, provided that

(1) less than 50 per cent of the voting shares are beneficially owned by non-eligible persons; and

(2) no one person or group of persons acting in concert who are neither Canadian citizens nor are ordinarily resident in Canada holds more than 5 per cent of the voting shares.

The Chairman: Stopping right there, Mr. Kimber, would it disturb your presentation if the committee were to decide that that 5 per cent should be 10 per cent?

Mr. Kimber: No, it would not, sir. We have made the suggestion that we might go to 10 per cent if that was less than one-half of the largest Canadian holding.

The Chairman: Ontario suggested 10 per cent when they were before us.

Senator Connolly: You say 10 per cent, if that 10 per cent is no more than one-half of what?

Mr. Kimber: The lesser of 10 per cent or one-half of the holding of the largest Canadian shareholder.

Senator Connolly: And there still would be a ceiling of 10 per cent?

Mr. Kimber: That would be the maximum ceiling. But if you had a Canadian shareholder with 14 per cent, then the maximum would be 7 per cent.

The Chairman: While you are on that point, perhaps this is a good place to try to tie the thing together. We have had mention before us of the rights issue. In a rights issue, a person who has reached his maximum, say 10 per cent, and he exercises his rights, he may then contaminate himself because of that. Don't you think that the rights issue should not count in the calculation of the 10 per cent?

Mr. Kimber: May I ask Mr. Donaldson to reply to that? We debated the question of rights issue at great length and if I am paying a lawyer to come down here, then I think I should let him talk on that point.

Mr. R. A. Donaldson, General Counsel, Toronto Stock Exchange: Mr. Chairman, in our initial brief we were concerned that the issuing of rights may possibly bring into play the acquisition of control provisions in Bill C-201. On a closer reading of section 3.5(b) and (c) we concluded that the wording in essence says this: the mere granting of a right or an option is deemed to be an acquisition of

control of the shares represented by that right. Now, if that is a proper interpretation of that section, then the status quo of every shareholder cannot change when a rights offering is made.

The Chairman: Except to the extent that some rights are not exercised.

Mr. Donaldson: Yes, sir, that is quite correct.

Senator Connolly: Would you repeat your comment, Mr. Chairman?

The Chairman: I say that on a rights issue, if every person exercises his rights, the relative position among the shareholders will not change at all. It is usual, however, that some persons do not exercise their rights, so to that extent the percentage relationships may change. The 10 per cent might become 11 or 12 per cent, which would change the status of that particular person. Therefore the Investment Dealers Association suggested that there should be an exemption of a rights issue from the operation of this bill.

Senator Cook: Mr. Chairman, if all the rights were eventually sold, it would not change the percentage. It is only in the event of certain rights lapsing that the percentage would change.

The Chairman: The relative positions would not change, that is correct. It is only in the case, which I believe to be usual, of all rights not being taken up 100 per cent. Is that a correct conclusion?

Mr. Donaldson: Normally, Mr. Chairman, in a rights offering there is an underwriter behind the issuer of the rights. In the event that all the existing shareholders do not take up and pay for the rights, the status quo, if there is a foreign shareholder, will change and therefore there will be an acquisition of control.

Senator Connolly: There might be an acquisition of control.

Mr. Donaldson: Yes. If that does not take place and, in fact, all the shares are taken up pursuant to the right, the status quo will not change and there will be no acquisition of control. The Chairman is quite correct, that in the normal case the holders of shares entitled to rights will not all exercise them. Therefore, if a foreign shareholder takes up his rights, he will have a greater percentage in the company after the rights offering than he would previously have had. This is because new shareholders will have bought rights from the underwriter. Our point is simply that we interpret the bill to provide that every shareholder is deemed to have acquired the shares when the right is granted. If that is a proper interpretation, there can be no acquisition of control in a rights offering. If we are wrong, then our view is that there should be an exemption for a rights offering.

Senator Connolly: That is a good point.

Senator Flynn: But it seems to be illogical to have an exemption for a rights issue. It would change the whole pattern and the issuing of rights would be removed from the legislation.

Mr. R. T. Morgan, Vice-Chairman, Toronto Stock Exchange: We considered the possibility of an abuse, and feel that provision should be made for this.

Senator Flynn: This situation could be avoided by an undertaking of someone to buy all the shares not taken up by the shareholders. We see that regularly, don't we? A company will sell to others the shares which are not taken by the shareholders.

Senator Connolly: But I do not think we could legislate that.

Mr. Kimber: There could be an abuse in that the rights issue could be badly priced, with the understanding that the non-resident shareholder might take up the rights. The public would not be interested, but the non-resident shareholder would be. It appears to us, however, that the bill as it is now drafted in fact does exempt rights offerings.

Senator Flynn: I do not think that was intended.

The Chairman: We did not think so. Neither did the Investment Dealers Association, because they asked us to exempt a rights offering. They also asked that convertible debentures be exempt. I would like to hear your comments in that respect, because I am not so sure personally that convertible debentures being exempt would not present problems.

Senator Connolly: Before we move to the discussion of convertible debentures, would it be helpful if Mr. Donaldson gave us, at least for the use of the staff, the specific clauses to which he refers and which led him to his conclusion with respect to rights?

Mr. Donaldson: Mr. Chairman, the clause is on page 10, being 3(6)(c). Going through the clause, Mr. Chairman, it provides: "... a person who has a right under a contract...", down to subparagraph (i), "to, or to acquire, shares of a corporation...". It continues on page 11, "... shall be deemed... to have the same position in relation to the control of the corporation as if he owned the shares...".

In our view that means that once the right is obtained the share is deemed to be owned. Therefore, the status quo of all shareholders is maintained. How can control be acquired?

Senator Flynn: I can hardly agree with that. The intention is clearly that the right to acquire shares is as if they were acquired. If some shareholders do not eventually buy the shares, they will be deemed to have acquired them at the time of the issue. That is all the act provides; therefore the control will be there nonetheless.

The Chairman: But, as I understand it, Senator Flynn, this would mean that this right would be subject to screening.

Senator Flynn: Yes, I know that, but I say a person is deemed to have acquired and will be subject to screening. If it is indicated, however, that there is no intention to acquire the shares, what is to be done about that?

Senator Connolly: Senator Flynn, I believe you are stating that the legislation means that at the time the rights are issued there is no change in control and it is a pre-

sumption established by the bill; but, in fact, when the rights are issued, then the proportion of ownership held by a non-eligible person may change.

Senator Flynn: That is my view, and it would be the same as if the shares had been traded on the exchange at that time. It is only to create a presumption of acquisition of the shares at the time of the issue.

Senator Connolly: It is useful that Mr. Donaldson has pointed this out.

The Chairman: May I refer to the brief of the Investment Dealers Association, which states:

When referring to a rights issue, we mean the type of financing which allows all shareholders to maintain their pro rata interests in the corporation.

That is clear.

The bill, in our view, is unclear as to its applicability to rights issues. It would appear that in certain circumstances an NEP...

That means "non-eligible person".

... who purchases 5 per cent of the voting shares through the exercise of rights will have made an acquisition of control within the meaning of the rebuttable presumption of paragraph 3(3) (c). This results from the fact that although the percentage of shares ultimately owned may not change the non-eligible person has acquired 5 per cent of the voting shares. The Association also believes that as a result of the application of paragraph 3(6) (d) the non-eligible person could be deemed to have acquired control at the time he receives his rights. This analysis of the bill as it affects rights issues appears to be common throughout the industry and therefore the bill, simply because it is unclear as to its applicability, could well inhibit this method of equity financing by Canadian corporations.

This point was raised by Senator Cook recently. There might be inherent in this bill some prohibition that would interfere with Canadians financing by way of rights issues without having to go through the screening process. We feel that a rights issue, in all the circumstances, should not be subject to the screening process.

Senator Flynn: The presumption which is created here maintains the status quo.

The Chairman: It may.

Senator Flynn: It does. It says that all the shareholders are acquiring the shares at that time. When all the rights have been taken or have lapsed, the real situation could well come under the act, as if the shares had been transacted on the stock exchange. There is no problem with the presumption created here. It is the end result.

The Chairman: That is right.

Senator Flynn: That by the lapsing of some rights it may change the situation.

The Chairman: That is what would create the problem.

Senator Connolly: It could throw the proportion out. Has Mr. Donaldson any suggestion for correcting this?

Mr. Donaldson: In our brief we had made the suggestion—Perhaps Mr. Kimber could answer this.

Mr. Kimber: It was our view that the bill should not apply to the taking up of shares on a rights offering by a non-eligible person if such acquisition does not increase the percentage ownership of a non-eligible person.

Senator Connolly: You would not need that. I do not think you would need that, especially that last phrase.

Mr. Kimber: We are not suggesting a complete exemption of a rights offering. We recognize that the idea is set. There should be this ability of Canadian companies to finance by way of rights offering. We feel that in most cases there would be no problem. It is really only in a situation where there is almost a deliberate plan of abuse of the situation. Mr. Morgan might develop this. He is a working broker and may have some comment.

Mr. Morgan: It is conceivable, and it has happened, that a Canadian corporation has issued rights at a price which was in excess of the market. It appears to be a ridiculous thing to do, but it has happened. Our only thought on it is that probably something could be put in to prevent a deliberate abuse. If the corporation did that for the purpose of allowing the non-resident to take up his rights by paying a little more for them, the Canadian could say, "There is no way I would do that. I will buy the shares on the market." That is the only abuse that could exist.

The Chairman: I am prompted to ask: what is wrong with that.

Mr. Morgan: It seemed to us that it might get away from the intent of the bill. In an extreme case, a rights issue could be put out for 30 per cent of the corporation's shares. At a price of \$5 over the market, the non-resident who owns 4 per cent could take all his up. He would then be exempt from the screening process. He would own, say, 35 per cent. Would that be the intent?

The Chairman: What would be the attitude of the exchange towards a rights offering on such an issue being offered at a price in excess of the market price? Would you approve of the transaction?

Mr. Kimber: I think we would approve of the transaction. We would question the purpose of it. It is hard to imagine that there would be a legitimate purpose for it. If they could convince us that the proposition was done for some legitimate purpose, we would not oppose it. But if there is any question of foreign-ownership abuse, then we think it should be stopped.

The Chairman: How is it a form of ownership abuse?

Mr. Kimber: If it were designed to give the non-resident more than the percentage which the legislation says he should have. That is what I mean by abuse.

The Chairman: I do not think the legislation does that. I think the legislation, in certain circumstances, requires the screening process.

Mr. Kimber: Yes. I accept that correction.

The Chairman: All we are saying is that we wonder whether the screening process should apply to a rights issue.

Senator Connolly: In the case described by Mr. Morgan, the non-resident in that case would have to submit himself to screening, would he not?

Mr. Morgan: Yes. I understand the IDA recommended that there should be no screening process, that it be an automatic process. We agree with that, except that we added in our original thinking that perhaps there should be something to look after any possible abuse. Otherwise we agree entirely with the idea of no screening.

The Chairman: If there is an abuse, I usually find that the amending process starts to work pretty fast.

Senator Connolly: Plugging the loopholes, we call it.

Mr. Christopher Barron, Immediate Past Chairman of Board of Governors, Toronto Stock Exchange: There is one point, in that respect. In the illustration that was used, you would have to bear in mind that if a man held, say, 5 per cent of the shares, in the new issue of rights he would only be offered 5 per cent for the rights of his own shares. If there were increasing capital by 30 per cent through the rights issue, he would only be acquiring 5 per cent of the 30 per cent. So even in the most extreme example, it does not sound like a very serious issue.

The Chairman: It is not one on which you can take a firm stand, except the extension of the screening process to a rights issue does seem to be a bit too hard.

Mr. Morgan: We agree with you.

Mr. Kimber: We think that the situation that would be a problem would not be extensive.

Senator Cook: In subsection (d) on page 11, which exempts anybody who gets control because of a debt, it says it is exempt as long as it is a proper debt, "and not for any purpose related to the provisions of this Act." You could exempt the rights issue and put in that tag at the end which would do both things: It would extend the proper rights issue; and, at the same time, if it were an improper issue, he would be caught.

Senator Connolly: That would be a neat way of doing it. But we diverted you, Mr. Chairman. You wanted to talk about convertible debentures.

The Chairman: I wanted to ask for your views on convertible debentures.

Mr. Barron: It is interesting, because on the way down in the airplane we were talking about a section in our brief which related to the question of what precisely was equity. Did equity mean common shares, or did equity also mean debt which was convertible into common shares? I am afraid I am not giving you an answer.

Senator Cook: Under the act it means a debt which can be converted into common shares.

The Chairman: All that was presented to us was that a convertible debenture involved the right of any person, who wanted to convert from debt to share capital, to do so on the terms set out. That may result in a non-eligible person, by exercising a convertibility right, being subject to the screening process. Is there anything inherent in that kind of transaction that would require the screening process?

Mr. Kimber: I guess I am showing my bias towards the secondary market. The investment dealers may be showing their bias towards the primary market. We take a different stand. We think there would be a danger in connection with convertible issues. One of the selling features in convertible issues is that they are convertible. They are priced differently. They are more attractive for that reason. My personal view would be that you would have to include convertible issues in the screening process.

The Chairman: You used the word "abuse." I know what the word means . . .

Mr. Kimber: I would think it would be a means of avoiding the legislation.

The Chairman: Is that bad or good?

Mr. Kimber: Well, since we agree with the legislation . . .

Senator Connolly: I am sorry, Mr. Chairman, I did not hear that last exchange.

Mr. Kimber: The Chairman asked me if I thought avoiding the legislation was good or bad. My answer was that since we agree with the legislation, we think a loophole which would permit the legislation to be avoided is bad. Perhaps my language is too strong.

The Chairman: I was not putting it on the basis of a loophole. I put it on the basis of an exemption of convertible debentures from the screening process. That is not avoiding a loophole.

Mr. Kimber: No. Perhaps Mr. Donaldson could answer that.

Mr. Donaldson: Mr. Chairman, if the exemption were to be there for any type of convertible security, presumably you would have to then bring into play the acquisition process when the holder of that convertible security converted it into equity.

The Chairman: Yes, that is right. That is the case under the bill. My question is: Why should the screening process apply in those circumstances? The investment originally is in a form which is not subject to the statute; it is in a debt form, carrying certain rights. If you exercise that at a later date, why should you then be subject to the screening process?

Mr. Kimber: At a later date or at the beginning?

The Chairman: Usually the terms of convertibility of a convertible debenture are at dollar amounts in excess of the current market. Therefore, it would be at some time in the future, if at all, that the conversion privilege would be exercised.

Mr. Donaldson: The problem here, Mr. Chairman, taking the example of a publicly-incorporated company that has done a convertible debt issue and that debt is outstanding in the hands of, let us say, 500 Canadians, if you do not require that that convertible debt be taken into account in determining the non-eligible status of the investor, or whether control is being acquired, the corporation itself would never know exactly, unless it was looking at its transfers every day, precisely when the debt is being converted. The problems would seem to be much greater

from the point of view of the review agency if you waited until the debt was converted and then said . . .

The Chairman: Yes, but that was not the point of the Investment Dealers Association. The point they made was this:

Depending on the state of the market it may be necessary for a corporation to include a convertible feature before it can successfully place a debt issue. By reason of paragraphs 3(6)(d) and 3(3)(c) the acquisition by a NEP of convertible debentures which give him the right to purchase 5% or more of the voting shares of the issuing corporation is presumed to be an acquisition of control by the NEP unless the contrary is established.

This is the area to which I am addressing myself. This is what the bill proposes. The Investment Dealers Association brief goes on to say:

The failure of the bill to provide a summary procedure whereby the NEP could establish the contrary with certainty may have a deterring effect on the participation by many NEP institutional investors in this type of financing, whether on initial issue or in the after market. It is our view that the intent and purpose of the Bill would be better served if the participation by NEP institutional investors in such a financing were facilitated.

Senator Connolly: Of course, Mr. Chairman, I do not see how the summary procedure proposal would get to the root of this. If the bill says that there is the presumption that the person who acquires the rights to convert under the convertible debenture, being a non-eligible person he has to apply for a ruling, that is the level at which the change has to be made, and it will not be cured by any summary procedure, because the summary procedure will just throw the person who makes the decision on the application right back . . .

The Chairman: If I am a non-eligible person and I acquire some debentures carrying with them convertible rights, there is a presumption right away of acquisition of control if I acquire 5 per cent or more—or, if we make it 10 per cent, 10 per cent or more. The question in my mind is how I rebut that.

Senator Connolly: I suppose, on the facts.

The Chairman: Well, on the fact that you did not intend to acquire control? If there is a statutory way of presuming that one has acquired control, how does one rebut it? It seems to me that the question we have to consider is whether or not there should be such a presumption.

Senator Connolly: I do not suppose you can rebut it if, in fact, you do acquire over 5 per cent by exercising your rights.

The Chairman: But the question in my mind is: Why should that kind of transaction be subject to this screening process?

Senator Cook: You have an industry going through a rather difficult time and it requires financing, and the only fellow who is going to be interested in buying a bond is someone who sees the possibility of getting control. With this legislation he cannot do it.

Senator Connolly: Of course, that is the type of thing the bill is designed to prevent.

Senator Cook: Yes, but in the meantime the company goes to the wall.

The Chairman: We are just looking for information. I thought you people were going to give us answers. We will weigh them afterwards.

Senator Connolly: The theme of the bill is that once you go over 5 per cent, whether you buy them on the open market, buy them directly from the company, or get them by way of rights, whether they are the issue of rights on the shares that you hold or the issue of convertible debentures, or on a debt issue, you are then a non-eligible person and the screening process applies, and whether it is a summary procedure or not, it does not matter.

The Chairman: Mr. Kimber, could you state what you regard as an adequate reason for requiring the screening process in the case of convertible debentures?

Mr. Kimber: I would think the screening test would be the same as if you were buying equity. That is an area of government policy and, I suppose, it is going to be worked out in each individual case. I am not competent to comment on what would be the test that the screening process might set. It would be a different test in different parts of the country.

The Chairman: We cannot speculate as to how one rebuts this presumption.

Senator Cook: Am I right in assuming that in all of these cases we agree that it should be 10 per cent and not 5 per cent?

Senator Connolly: I do not believe they have any objection to that.

Mr. Kimber: We did not go quite that far. Ten per cent is a magic figure. It has been used in a lot of legislation.

The Chairman: Securities legislation.

Mr. Kimber: That is right. It has been used also in the Bank Act. The key sector of legislation has the 25-10 per cent ruling.

Senator Cook: You think it should be 10 per cent for the sake of uniformity, if nothing else?

Mr. Kimber: Yes.

Senator Connolly: Mr. Chairman, could I use another example? Suppose, for the sake of argument, that even on the issue of rights or on the issue of convertible debentures, the non-resident does acquire more than 5 per cent, immediately the presumption applies and the screening process comes into effect. From the practical point of view, and you people must be practical, I presume, rather than theoretical about these things, does that—Well, let me ask the question this way, rather than suggesting an answer. What is wrong, from the point of view of financing or marketing the securities, if the non-eligible person, in those circumstances, has to make an application in order to proceed with his investment?

Mr. Kimber: We feel that, when we are talking about this passive portfolio investment, the man who is not interest-

ed in control will not go through the process of having the investment screened. He does not want control: he is not the least bit interested in it, so he will not go through that.

Senator Connolly: He will not make the investment.

Mr. Kimber: He will not make the investment.

Senator Connolly: That is the point.

Mr. Kimber: We feel that there is a great deal of room for this portfolio type investment. While we do not go that far in our brief, to the 10 per cent figure, we feel the portfolio type investment up to, say, the figure of 10 per cent is good for Canada. It is not bad, it is good for Canada, and it increases the capital amount in Canada.

Senator Connolly: We follow the reasons for it.

Mr. Kimber: This may slow down that process, but those people usually make up their minds relatively quickly and do not want to get involved in any expense.

Senator Connolly: Would not changing the figure from five per cent to 10 per cent accomplish what you want?

Mr. Kimber: Yes, it would.

Senator Cook: Very few portfolios would take more than 10 per cent at once.

Mr. Kimber: That is right.

Senator Beaubien: He is not an insider under 10 per cent.

Mr. Kimber: No.

Mr. Barron: You asked what is wrong with the process. If the process has too fine a mesh in the screen, you put a lot of companies unnecessarily into a category in which they clearly do not belong. The result of that is the impact on Canadian investors as well, who decide that because that company is unreasonably in a net category it may not represent to them a good investment, because they know that if, for instance, it is a company expanding through acquisition, in future all acquisition may have to be screened. Our point would be: why put any Canadian company unnecessarily through the process?

Mr. Kimber: Perhaps I did not make myself clear on this point. Mr. Barron has put it much better than I did. We think there are a lot of truly Canadian companies that may be caught in the net category, and then they cannot make investments in other Canadian enterprises. We think the number of qualified Canadian companies should be enlarged.

Senator Connolly: Contamination through rights. That is what happens; contamination of the company through the acquisition of rights.

The Chairman: We have been using the word "contamination" to describe the situation. It is not a bad description.

Mr. Barron: We would say: Why contaminate a company if in aggregate at least 50 per cent of the shares are Canadian owned, and if in total no more than 10 per cent shall be owned by one?

Senator Cook: There seems to be no justification for the five per cent.

Senator Connolly: Is it over-simplifying it to say that even if you do not exclude portfolio investments, if you raise the percentage from five per cent to 10 per cent you pretty well cure this problem?

Mr. Kimber: To some extent, but we would also like to move the 25 per cent up to 50 per cent if no one non-eligible person or group of non-eligible persons had more than that figure.

Senator Cook: Had no more than 10 per cent?

Mr. Kimber: Yes.

Senator Connolly: In one case 10 per cent and 50 per cent in the case of a private company.

Mr. Kimber: We have the 10 and 25 per cent rule. We are now suggesting a 10 and 50 per cent rule for this legislation.

Senator Cook: Do I understand that the 50 per cent will be subject to the further point, that no one in that 50 per cent category would have any more than 10 per cent?

Mr. Kimber: That is right, or group. The legislation now refers to an individual. We think it should be an individual or group acting in concert.

Senator Cook: We have had nobody tell us why five per cent has been chosen. It is just a figure out of the hat.

The Chairman: But we have had people tell us it should be 10 per cent.

Senator Cook: Exactly.

The Chairman: And they have given what appear to be logical, sensible reasons.

Senator Connolly: And we have additional reasons for 10 per cent today.

The Chairman: Yes.

Mr. Kimber: We felt that perhaps we might be asking for too much if we asked to go to 10 per cent, so we asked to go to a maximum of 10 per cent, or half of the largest Canadian shareholder, whichever is the less.

Senator Connolly: It is complicated enough without that.

Mr. Kimber: There is one thought that is not in our brief, but is in our addendum.

Senator Connolly: Before you go on to that other thought, perhaps I might just stop you there. Do you not think that in the administration of this bill, so far as the exchange and the industry is concerned, if you introduce that secondary test of no more than half of the largest Canadian holding it would be more complicated?

Mr. Kimber: Unquestionably.

Senator Connolly: Is it not better to say 10 per cent? Then you know what you are looking at.

Mr. Kimber: If the legislation came out with 10 per cent, we would not argue for the opposite. If the legislation is at five per cent, we would say you could still go to at least one-half of the largest Canadian shareholder. That would be known in a large number of cases, because the largest

shareholder would normally be an insider and would be reported. He would have to be an insider.

Senator Beaubien: Suppose he sold his stock? Then you have to start all over again.

Mr. Kimber: That is a problem in the legislation now which is not cured.

Senator Beaubien: I think you would be on firmer ground to recommend 10 per cent and be done with it. At 10 per cent you are automatically an insider.

The Chairman: Could we now move on to your next point?

Mr. Barron: Unquestionably that is the logical cut off. There is no question that 10 per cent makes more sense.

Senator Beaubien: Yes, stick to that.

Senator Cook: After all, if this legislation does go through at 10 per cent and they find it is not effective, the net can always be narrowed afterwards. Certainly 10 per cent seems to be a low enough figure, or a small enough net, to start with.

Mr. Kimber: The Chairman has asked me to refer to the addendum filed this morning. May I briefly state what that is.

We submit that the Canada Corporations Act should be altered to provide that a company, pursuant to a resolution passed by a simple majority of shareholders attending a meeting called for the purpose, may apply to amend its charter documents permitting it to regulate the transfer of its shares so that no transfer could be made which would result in the company becoming subject to the presumptions as to control by non-eligible persons contained in the legislation. Such an amendment would permit the Canadian company to regulate its transfers so that its eligibility would not be called into question because of transfers of shares to non-eligible persons over which it had no control whatsoever.

There is no effective means available under the existing law to organize public companies so that they will at all times be certain as to their eligibility to invest in Canadian business, except with respect to institutions engaged in key sectors of our economy, such as banks, trust companies, loan companies and companies engaged in the communications field. The provisions of the existing companies legislation are too limited in their scope, and would not permit a company to place restrictions on the transfer of shares for the purpose of maintaining the status of an eligible person under the proposed legislation.

Senator Flynn: Would the transfer of shares of non-eligible persons be in the bylaws?

Mr. Kimber: Yes.

Senator Cook: There are proportions.

Senator Flynn: But you say you are not entitled to sell your shares to a non-eligible person.

The Chairman: You have this in the Bank Act now.

Senator Flynn: I know it is in the Bank Act. That is all very well. That is for a definite purpose. We are not here seeking the same purpose or the same objective.

The Chairman: I agree.

Senator Flynn: I do not see why you should recommend that for the Canada Corporations Act without recommending it to all the legislatures. Provincially incorporated companies should do that anyway.

The Chairman: Secondly, senator, we are dealing with Bill C-132, and we should operate within the relevancy of that.

Senator Flynn: I am worried about such a suggestion.

Senator Connolly: I do not think you need to be worried about it.

Senator Flynn: You are telling me that I will not be able to sell my shares to the person I want to sell them to.

Senator Connolly: I have seen that in the charters of private companies. I do not know about public companies.

Senator Flynn: With private companies it is all right.

Senator Connolly: With private companies you often see this, and people sometimes really get caught. On that point you can be worried, that the shareholder himself may be inhibited about a sale.

Senator Cook: This is an attempt to provide for self-regulation when the company asks for it, is it not? The company has to ask for it. The company has to pass a resolution, and then you say, "Don't bother about us, because we regulate ourselves."

Senator Flynn: I am just thinking of any large public company.

Senator Beaubien: How do you know who is going to buy your shares?

Senator Flynn: Take a public company like Bell Canada, for instance. I may have several thousand shares in Bell Canada. Bell Canada, in order not to become contaminated, as you say, would pass a by-law that no transfer of its shares could be made to non-eligible persons, and that certainly would restrict the market.

Senator Cook: That is what the banks do now.

Senator Flynn: But that is because they are banks.

Mr. Kimber: Senator, Bell Canada now is an eligible company, and people who invest in that company know that it is an eligible company, and know that it is going to be able to make other investments in Canada. If, under the bill, 26 per cent of the shareholders of Bell Canada are non-eligible people, Bell no longer can invest in Canada without going through the screening process.

Senator Flynn: I understand that.

Mr. Kimber: So you, as a Canadian shareholder, lose some rights in that company because its status changed...

Senator Flynn: That is right.

Mr. Kimber: ... due to the action of non-eligible people?

Senator Connolly: That is the other side of the coin.

Mr. Kimber: If the majority of the shareholders of that company say, "We want to have our company eligible to advance and develop in Canada," ...

Senator Connolly: Without this screening?

Mr. Kimber: Then a majority of the shareholders can pass a resolution saying that the status of the company cannot fall below 50 per cent.

Senator Connolly: And then put that into the charter.

Senator Beaubien: If you take Bell Canada, I do not think that that is exactly true. If 26 per cent of the shareholders of Bell Canada were non-eligible people, they would be in the same position as CPR is in now, and CPR is an eligible company, because it is deemed that there is no big group that owns a great amount of the shares, that they are individuals, and that the board of directors are the people in control, so Bell Canada would not be disqualified at 26 per cent.

Senator Connolly: Under this?

Senator Beaubien: Yes. The CPR is not deemed to be non-eligible. There is much more than 25 per cent of CPR that is owned outside.

Senator Connolly: Let us not go off this point. Let us clear it up.

The Chairman: I understood Mr. Kimber to be making an assumption that if a certain something happened in relation to Bell Canada, there might be a result that it might be difficult to live with. But it was an "if", an assumption.

Senator Beaubien: But it has happened with the CPR now.

Mr. Kimber: Senator, if 26 per cent of the shareholders of Bell Canada were non-resident, Bell Canada would be a contaminated company.

Senator Beaubien: Then what about CPR?

Mr. Kimber: If more than 25 per cent of the shares of CPR are non-residents, and I think they are...

Senator Beaubien: I am sure they are.

Mr. Kimber: Then it is now a contaminated company.

Senator Beaubien: No. I asked that same question here in this committee: Is CPR going to be considered by this bill to be a non-resident? We discussed that point before and it has been brought out that, if there is no one big group that owns a significant amount of the stock, the company is then deemed to be controlled by its directors.

Senator Connolly: All I want to know is, where is that in the bill?

Senator Beaubien: I agree, we should bring it out.

Senator Connolly: Where is it?

Senator Beaubien: These gentlemen are specialists.

Mr. Kimber: I have not practised law for a long time.

Senator Connolly: You are doing all right.

Mr. Donaldson: If you look at clause 3(2), on page 5, it says:

(2) Where, in the case of a corporation incorporated in Canada or elsewhere,

(a) shares of the corporation to which are attached

(i) 25 per cent or more of the voting rights . . .

are owned by one or more individuals described in paragraph (a)

. . . by one or more governments or agencies described in paragraph (b) . . .

the corporation is, unless the contrary is established, a non-eligible person.

Senator Burchill: It is a presumption.

Senator Flynn: It is an arithmetical problem; It is not a presumption. Then CPR would be a non-eligible corporation?

Mr. Donaldson: You must then come to clause 3(7) on page 12, at paragraph (b). It is somewhat difficult to understand really what the draftsman had in mind. It says:

(7) For greater certainty, . . .

(b) where no one person or group of persons controls . . .

I do not know what "controls" means there, whether it is 5 per cent or 25 per cent or effective control at 50 per cent.

—a corporation through the ownership of shares . . ., the corporation shall be presumed to be controlled by the group of persons comprising the board of directors or other governing body of the corporation, in the absence of any evidence . . .

. . . to the contrary. So I think it is open to interpretation that even though there is a provision in clause 3(2) that says if more than 25 per cent is held by non-residents, individually as a group, you may possibly be able to go over to clause 3(7)(b) and say, who controls the board; and under that provision, if more than 20 per cent of the directors are non-resident . . .

Senator Beaubien: We were told very definitely that the CPR was deemed to be an eligible corporation.

Senator Cook: That was only the opinion of the counsel of the Justice Department.

Senator Beaubien: That is certainly a point that should be made clear.

Senator Connolly: Mr. Donaldson, you do mean sub-clause (7)(c) when you go down to the 20 per cent?

Mr. Donaldson: Yes.

Mr. Barron: Basing it on the 25 per cent aggregate, we would take it that the top third of the 100 largest companies in Canada would be qualified as NEPs, non-eligible persons. Some of them might be NEPs anyway, but there may be some of them like CPR who might clearly become NEPs, for no particular reason.

Senator Connolly: You said a third, that is, 34 out of the top 100 companies in Canada, would be contaminated companies?

Senator Beaubien: Could be deemed to be contaminated companies?

Mr. Barron: Yes.

Senator Connolly: The presumption then is established and it is up to the company to rebut that presumption?

An hon. Senator: Or take a chance?

Senator Cook: This one would not help?

Senator Connolly: Taking a chance might not be good enough, but to rebut the presumption, then, you must either make an application in the ordinary way or go under the quick procedure, of "summary procedure"—that is, if we amend the bill to bring that in—then perhaps they could go that route and using the provisions of sub-clause (7) at page 12, coupled with whatever other provisions there are, they might get that advance ruling.

Could I ask this, Mr. Chairman, of our experts? Could that be done once and for all by the company, or would it have to be continued applications, depending upon the changes in the complexion of its shareholders' record?

Mr. Donaldson: That is one of the problems that we envisage in trying to provide for a summary procedure for a person who thinks he may be a non-eligible person. As we all appreciate, the shareholdings in large corporations change on a daily basis, and on that basis it may be very difficult for an agency to say that from Day One that person will always be an eligible person. However, it may be possible within some range of shareholdings for the agency to give some guidance to the person or to the applicant.

The Chairman: Of course, you know a very simple way would be to have the company require, when shares are presented for transfer, that they give a Canadian address.

Senator Flynn: That is a nice loophole, however, that you have indicated, that the company could dispose of the shares held by non-eligible persons for a period and then may get a vacation, and then refer back to the other position, after the operation is completed.

Senator Beaubien: If someone wanted to buy something for which it had to put up some bonds of, say \$100 million, and was going to make a deal, if it was deemed that it was not eligible and could not make the deal, then it could revert.

The Chairman: We will have to move along.

Senator Connolly: Mr. Chairman, we have this idea in mind for a possible change?

The Chairman: Yes.

Mr. Kimber: I will try to be brief. We feel that companies which are already under the key sector legislation, such as banks, trust companies and other companies of that nature, should always be deemed to be eligible persons; but I do not think the legislation does that.

The Chairman: No, it does not.

Senator Flynn: It has to conform with the laws governing them.

Mr. Kimber: Another point is that we have tried to figure out what the word "nugatory" means in the legislation. My friend smiles, so I guess it has been raised before. To our mind the word "nugatory" implies that the transac-

tion was invalid. We feel that the transaction should be such that the court would have the right to direct the purchaser to divest himself of ownership. We do not think it should go back in time and say that the transaction was invalid. This is particularly of significance on a stock exchange transaction where you make the contract and it is a binding contract and the vendor then goes out and makes another investment. However, under this legislation, he might find some time later that the person to whom he had sold it was not an eligible person, the transaction was invalid and that he, the vendor, still owns those shares that he had sold some months earlier. We think the legislation should not say that the transaction was nugatory but that the purchaser be required to divest himself of it.

Senator Cook: It is the purchaser's burden or worry, not the vendor's.

The Chairman: Have you anything else to add, Mr. Kimber?

Mr. Kimber: No, Mr. Chairman. There is the brief here and we are available either to you or your staff at any time, if we can help you further.

The Chairman: I have availed myself of that in the past by calling you on the phone, and it may well happen again.

Mr. Kimber: We do approve of the spirit of the legislation; we are not opposed to it. We hope the suggestions we have made may make the legislation more effective.

The Chairman: We have quite a series of things in mind. Thank you very much, Mr. Kimber.

Mr. Kimber: Thank you very much, Mr. Chairman.

The Chairman: Honourable senators, we will now adjourn until 2.15 p.m.

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1973

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 18



THURSDAY, JUNE 28, 1973

**Third Proceedings on the Examination and Consideration of Bills based on
the Budget Resolutions Relating to Income Tax in Advance of the said Bills
coming before the Senate**

(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, June 14th, 1973:

The Honourable Senator Connolly, P.C., for the Honourable Senator Hayden moved, seconded by the Honourable Senator Laing, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and consider any bill based on the Budget Resolutions relating to income tax in advance of the said bill coming before the Senate, or any matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Thursday, June 28, 1973

(18)

Pursuant to adjournment and notice, the Standing Senate Committee on Banking, Trade and Commerce met this day at 2:20 p.m. to examine and consider bills based on the Budget Resolutions relating to income tax in advance of the said bills coming before the Senate. (Bills C-192 and C-193).

Present: Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Burchill, Connolly (*Ottawa West*), Cook, Lang.—(7).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and Mr. T. S. Gillespie, Consultant.

The following witness was heard:

Department of Finance

Mr. M. A. Cohen,
Assistant Deputy Minister

At 3:15 p.m. the Committee adjourned to the call of the Chair.

ATTEST:

Georges A. Coderre
Clerk of the Committee

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Thursday, June 28, 1973.

The Standing Senate Committee on Banking, Trade and Commerce met this day at 2.15 p.m. to examine and consider any bill based on the budget resolutions relating to income tax in advance of the said bill coming before the Senate, or any matter relating thereto.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have a quorum, so let us get down to work.

Mr. Cohen, the last time I believe we proceeded as far as clause 19 of the bill.

Mr. M. A. Cohen, Assistant Deputy Minister, Department of Finance: I believe that is correct.

The Chairman: We will start at clause 19. Will you tell us about it? First of all, does it amend the presently existing law?

Mr. Cohen: Yes, sir.

The Chairman: In what way?

Mr. Cohen: This is a tightening amendment, which plugs a loophole that existed in the former Bill. It is quite a complex issue but, very briefly, it prevents the diversion of business income into investment income in transactions between companies not dealing at arm's length.

The Chairman: Could you illustrate that?

Mr. Cohen: In order to illustrate the point, I have to take you back into the structure of the system for a moment. First of all, we are dealing with private companies in this clause. Under the system the active business income of a private corporation was taxed at 50 per cent in 1972. Although the rate drops down to 49 per cent in 1973, 48 per cent in 1974 and eventually to 46 per cent in 1976, allow me to refer to it as 50 per cent. This rate applies unless the corporation is eligible for the small business deduction in which case it will be taxed, as you know, at 25 per cent. On the other hand, investment income of private companies is also taxed at the basic corporate rate of 50 per cent. However, when income is distributed by way of dividends to shareholders we refund to the corporation half the corporate tax paid in respect of its investment income. Thus, there is an advantage to corporations to convert business income into investment income in order to obtain that

refund. This is particularly attractive for companies which are, in the final analysis, foreign-controlled where the dividend would flow across the border.

The type of problem with which we were concerned involved a company carrying on an active business. On the face of it, all of its profits would appear to be active business income. That same company could create a related or affiliated company and, instead of having all the assets of the company in the operating company, it might put the lands, buildings, machinery and, perhaps, some of the scientific technological information into the related company and then charge the related company rent, royalties and interest. The charges would show up as investment income because they would be rent, royalties and items of that ilk. That would be converting business income into investment income in a way which was never intended and making available a refund of the investment income tax that had been paid.

In order to prevent that situation from developing within a non-arm's length group of companies, this clause provides that on those sets of facts income will retain its character as business income in the hands of the recipient holding company. A receipt which might be otherwise considered as rent will simply be considered as business income and the ordinary rules of taxing such income would then apply.

The Chairman: Is there any retroactivity to this?

Mr. Cohen: No, sir; this is prescribed to begin in any taxation year commencing after 1972.

The Chairman: Where is that provision?

Mr. Cohen: In clause 19, lines 13 and 14 "...in any particular taxation year commencing after 1972...". It would only affect a taxation year commencing in 1973. This measure was announced in the May, 1972 budget, so there is no retroactivity involved.

The Chairman: You are referring to the provisions of Bill C-259 rather than Bill C-170 as being the basic law, is that correct?

Mr. Cohen: Yes, Bill C-259 is the basic law.

The Chairman: So I suppose the question is: When is rent not investment income?

Mr. Cohen: That is right, sir.

The Chairman: And the answer is: When it becomes mixed up with an active business.

Mr. Cohen: When it has come in the form of investment income from an active business carried on by a related corporation.

The Chairman: Yes.

Mr. Cohen: It simply preserves the character of that income as if the whole operation had been carried on inside one company, to prevent the setting up of more than one company for this purpose.

The Chairman: Is there any flexibility to deal with the situation wherein it could not be said that the primary purpose of the separation of the business was to qualify for the lighter rate of tax?

Senator Beaubien: To avoid taxes.

Mr. Cohen: No, sir.

The Chairman: There would be no way out of such a situation?

Mr. Cohen: That is right, sir.

Senator Lang: It would not matter if it was a wholly-owned subsidiary company.

Mr. Cohen: Yes, sir; it would apply to any pair of related companies.

Senator Lang: Yes, but this would not be needed in the case of a wholly-owned subsidiary doing the renting?

Mr. Cohen: It would matter ultimately, because it would flow through as an exempt corporate dividend.

Senator Lang: But it still would not go to the ultimate shareholders as a refund.

Mr. Cohen: Ultimately, it would reach the individual shareholders.

Senator Lang: As fully taxable business dividends.

Mr. Cohen: That is what it should be, but our concern was that it would reach individual shareholders having been taxed as investment income in the corporation. More particularly, our concern was that it would cross the border. Without discussing the whole elaborate set of facts that could produce this, instead of our 50 per cent corporate tax applying, we would really only be applying a 15 per cent withholding tax, which would be quite a loss in revenue and in equity terms.

The Chairman: Are there any questions? You look rather quizzical there, Senator Lang.

Senator Lang: I have not quite got it straight in my mind how it would apply to a wholly-owned subsidiary.

The Chairman: If there were an existing subsidiary company carrying on an active business and the parent company, which just a holding company, was holding the shares, this clause would apply.

Mr. Cohen: That is correct.

The Chairman: The income flow from the active business to the parent company would move up free.

Mr. Cohen: If it moved as a dividend it would move free of tax. If it moved as rent or royalties, it would be treated in the hands of the parent holding company as business income; but I believe Senator Lang's question was the reverse.

Senator Lang: Yes, the other way around.

Mr. Cohen: He asked what would be the holding company in the sense of holding the assets of the subsidiary.

Very quickly, senator, it would come into the subsidiary as investment income. When it was distributed out of the subsidiary it would flow out as a dividend. That is an exempt dividend as it reaches the parent company and then on out to the individual shareholder, but the refund would have occurred when the subsidiary company paid out the exempt dividend.

The Chairman: What would happen if the parent company which was the owner of all the physical assets and operations leased those to a subsidiary so that it would have something in the nature of investment income?

Mr. Cohen: But for this clause, that would be investment income. This clause turns it back into business income because it comes from a related company carrying on an active business. Coming from a stranger, or an unrelated company, it would be investment income. This only applies to related situations.

Senator Beaubien: Yes, if you own both companies.

The Chairman: That takes us to page 18, clause 20.

Mr. Cohen: Clause 20 is essentially a technical relieving amendment, senator. It is applicable to mutual fund corporations and investment corporations. Mutual funds are entitled to obtain refunds on certain of their taxes paid, particularly capital gains tax.

We view the mutual fund as a conduit and we really want the individuals to receive that income tax paid by the mutual fund. The mutual fund is essentially a flow-through. In order to obtain the refund, the mutual funds must distribute their capital gains to their shareholders on a current basis. The funds told us that they do not have sufficient time at the end of the year to make all the calculations and the distribution to their shareholders. They do not know until the very last day their exact capital gains position. This clause would give them an extra 60 days into the next year to make that distribution in order to obtain their refund for the completed year.

The Chairman: It is relieving for accounting purposes, but not for tax purposes.

Mr. Cohen: The funds argued persuasively that if we did not do this they could not operate fast enough to obtain the refund.

The Chairman: We move now to page 19, clause 21.

Mr. Cohen: This is also a relieving amendment. As you know, we do not tax the proceeds of life insurance policies in certain cases. For example, when an individual dies and the policy matures the pay-out is not taxed. We have extended that exemption to include gains arising out of the termination of a policy by reason of the total and permanent disability of an insured person. Many so-called life insurance policies will pay out, not just on death, but on total and permanent disability. We desired to cover the two situations in the same manner so that they are both exempt.

The Chairman: Double indemnity policies were written years ago, under which in certain circumstances twice the face amount of the policy was collected.

Mr. Cohen: Did they not make a movie about that, "Double Indemnity"?

The Chairman: Yes; I am not sure they had this in mind.

Senator Beaubien: Mr. Cohen, if twice as much was received under a policy would it all be exempt?

Mr. Cohen: Yes.

The Chairman: This would not adversely affect that situation?

Mr. Cohen: No.

The Chairman: We are now at page 20, clause 22. It is always interesting to see "undue hardship" entering into the consideration of taxes.

Senator Cook: They admit there is hardship, but they do not want it to be undue.

The Chairman: The "undue" part of it is the question.

Mr. Cohen: This contains two important provisions, both of which are relieving. One introduces into the statute an authority which the Minister of National Revenue previously had by regulation. It permitted him to waive the obligation to deduct at source in cases in which it is apparent that there will be an over-deduction. It is a discretionary power which the minister has had for many years by way of regulation, and it is now included in the statute to cement in his right to relieve an employer or a payer from deducting at source in respect of an individual taxpayer in circumstances which make it apparent that it would cause hardship through over-deduction.

Senator Beaubien: It would be refundable.

Mr. Cohen: But the weekly deduction would cause a hardship because it dries up the cash flow.

The second part, which is new, gives the taxpayer a right—I stress the word "right"—to elect deductions at source in circumstances in which there would otherwise not be such deductions. This applies particularly in the context of the aged who receive, for example, certain types of pension payments which are not ordinarily sub-

jected to deductions at source. This is the other side of the argument, in which the pensioner would rather have weekly or periodic deductions than a large tax liability on April 30. He asks that deductions be made so that he will not have anything additional to pay at the end of the year. This gives the taxpayer the right to authorize a deduction at the source. This is purely voluntary, in situations where he wants it.

The Chairman: At any time during the year and on an established plan he could send in a cheque, and I am sure the department would take it.

Mr. Cohen: But he wants an externally imposed plan, not a self-imposed one.

The Chairman: He would not trust himself.

Mr. Cohen: That is right.

Senator Beaubien: He would have to do it in writing.

Mr. Cohen: Yes.

The Chairman: We come now to clause 23.

Mr. Cohen: Clause 23 is somewhat complex. It concerns registered retirement savings plans and deferred profit sharing plans. Basically we have a regime which says that a registered retirement savings plan can invest in public company securities—mutual fund corporations, mutual fund trusts, and other types of investments. The general characteristic of that is a wide distribution of the securities.

Senator Beaubien: Diversification, in other words?

Mr. Cohen: That is right. In the fund in which you are investing there is wide diversification of investment by the fund and a large number of people who have invested in that fund. Obviously, this provides an element of security and self-policing, because it is a publicly-held entity. It is not something that will lend itself to being abused.

Our basic rule is that if an investor in a registered retirement savings plan makes an investment in that kind of fund, and the investment was proper at the time he made it, that is the end of the matter. The registered retirement savings plan no longer need be concerned if the fund in which it has been investing goes bad. I do not mean goes bankrupt, but starts to invest improperly.

The present rule is that if it is good at the time you buy it, if it is a qualified investment at the time you buy it, that is the last time you have to look at it. We rely on the fact that it is a public, widely-held and widely-administered fund.

We came to a problem in this area, where there were a number of funds in which registered retirement savings plans and deferred profit sharing plans wished to invest, but these funds could not meet our tests. The particular test they could not meet was the test of distribution of holdings of shares. We found this particularly so on the west coast, where the argument was put to us, "We are

a public company in every sense of the word. We filed a prospectus; our units have been publicly sold; but our market is so small that we cannot meet your test."

Our prime test is that there have to be at least 150 units or shareholders. But these funds say: "It is through no lack of trying. It is simply that our market is not broad enough. We cannot meet that 150 shareholders' test; but in every other respect we are public."

We responded by saying, "All right. Provided that the fund that the registered retirement savings plan invests in stays onside with its investments, it will be a qualified investment of a registered retirement savings or deferred profit sharing plan and you do not have to meet the 150 shareholders test. You have to be public in the sense of filing a prospectus, but it is not necessary to have 150 shareholders. Because we do not have a guarantee of wide distribution, we need another kind of test. Our test will be that what these funds invest in always stays onside. It is no longer a case of if it is good when you buy it, it is good forever. If you are going to invest in that kind of fund, not only has it to be good when you buy it, but it has to stay good. It has to have proper investments which we say are appropriate for these kinds of plans.

This clause introduces a tax in respect of those funds that go bad. We have to have some method of enforcing this restriction. If a registered retirement savings plan invests in one of those quasi-public funds, which does not have 150 shareholders but has promised to stay onside, and that fund does not stay onside, we will impose a tax of one per cent a month on its bad investment.

That is a long and somewhat complicated explanation.

The Chairman: That is subsection (1).

Mr. Cohen: That is the whole of Part XI.1.

The Chairman: The heading refers to "Deferred Income Plans." It is a different category from retirement savings.

Mr. Cohen: No. This applies to both registered retirement savings plans and deferred profit sharing plans. Either one can invest in one of these quasi-public funds. The funds are public, but they have not got the 150 shareholders investing in them.

Senator Beaubien: That does not change the definition of a bad public company. It has either to be listed or have 150 shareholders. It doesn't change that part in any way.

Mr. Cohen: No. It is addressing itself to those who cannot get 150 shareholders or get a listing.

Senator Beaubien: I am a director of a corporation which was formed in 1947. There were shares, with coupons attached, or dividends, but the company has not been able to prove that it has 150 shareholders. They must have well over 2,000 shareholders, but they have

not been able to prove that. This puts the company in a poor position. This does not change that problem at all?

Mr. Cohen: This does not solve that problem. We have run across one or two similar situations. We have looked to the Department of National Revenue, and hoped that they would solve this on an administrative basis by accepting an affidavit from an officer of the company stating that he is satisfied that there are more than 150 shareholders. But this does not affect that situation one way or the other.

The Chairman: We come now to clause 24.

Mr. Cohen: This concerns taxation of insurance companies.

The Chairman: We gave the insurance companies some relief in Bill C-259 or in Bill C-170. You are not taking that away?

Mr. Cohen: No. This was part of the package of things that was discussed with the insurance industry, many of which were incorporated in Bill C-170. This is another aspect of it. This deals with situations where insurance companies could have avoided paying some of the tax that they were obviously expected to pay. Unless you wish, I will not take you through the mechanics of it; but to the best of my knowledge the insurance companies have not objected to this provision.

The Chairman: They have not asked to appear before us; so that is a sure sign. We now come to clause 25.

Mr. Cohen: Clause 25 deals with section 212 of the Income Tax Act. That is a withholding tax provision on payments or credits to non-residents. It covers a number of items. May I discuss clause 25 and clause 26 together, because they are interrelated on the question of withholding tax and payments to non-residents?

The major part of the change in clause 25 is to clean up a number of technical anomalies. For example, the statute previously read that there was to be a withholding tax on timber royalties paid to non-residents. The way it read, it was possible to apply that section against payments in respect of timber royalties that were situated outside of Canada. That was not the intention. This particular change limits the timber royalties to timber limits situated inside Canada, which was our intention.

There are a number of other technical changes, mostly dealing with deferred income plans—that is, deferred profit sharing plans and registered retirements savings plans. These, by and large, represent a technical clean-up of anomalies that had existed. I do not recall whether it was the first or second day we were here dealing with this bill, but we got into a discussion of the difference between a registered retirement savings plan and a revoked registered retirement savings plan. I am pointing out that the amendment is designed to cover both. All this is doing is saying that the withholding tax shall apply to a revoked registered retirement savings plan or a revoked deferred profit sharing plan, in the same

way as it applies to a bona fide registered retirement savings plan and a deferred profit sharing plan; nothing more.

The Chairman: That is clause 25.

Mr. Cohen: That is clause 25 and the first part of clause 26.

The second part of clause 26 also deals with withholding tax, but in connection with a different problem. It deals with the problem of what we call short-term obligations. There is a good market in the sale of short-term paper across the border. In other words, American institutions tend to buy, quite frequently, short-term paper issued by Canadian companies. Sometimes this is what is called an interest-bearing obligation. Sometimes it is a discount obligation. It is usually a 60- to 90-day paper; that is the common length of those notes. Our withholding tax has to apply to the interest during that 60- or 90-day period. If it is a discount obligation, some part of that discount is really a proxy for the interest payment and our withholding tax should apply to it.

One of the characteristics of the short-term paper market is the fact that this paper is sold back to Canadians before it matures. It is very often sold back to the issuing company; and, alternatively, it is often sold back into the Canadian market. It is a very complex problem in trying to work out how to collect the withholding tax for the 60- or 90-day paper which is crossing the border and coming back. We had long discussions with the Investment Dealers Association who said that our original approach did not work very well, as it put an administrative burden on the market place. We worked out with them this alternative approach which does not change the policy. It simplifies the way in which we go about collecting withholding tax, and I believe the Investment Dealers Association is satisfied with it. They helped us to work it out.

The Chairman: If they buy the paper and it bears a rate of interest, there is no problem in determining the amount of the withholding tax at that time.

Mr. Cohen: The kind of problem that arose was that the interest was never paid. The note is so short in its duration that the whole thing was dealt with almost as if it were a discount obligation. If they had paid the interest across the border, there was no problem. But you buy, say, a note for \$100 for 60 days or 90 days, which amounts, in the aggregate, to \$3 or \$4 worth of note, the American will sell it back to the Canadian for \$103. The withholding tax was never paid across the border, but it was reflected in the purchase. The reason they were selling it back was to avoid paying the withholding tax. We had an elaborate mechanism to try to catch the notional amount. As I mentioned previously, it posed a serious administrative problem in the market place.

The Chairman: Is this new set of rules in the form of regulations?

Mr. Cohen: No. It is a change to the statute.

The Chairman: And this is right in the clause with which we are dealing?

Mr. Cohen: Yes, subclause 26(2) deals with the short-term obligations.

The Chairman: Then we have subclause (3). Is that included?

Mr. Cohen: It all pertains to the same problem, Mr. Chairman. The whole of clause 26, with the exception of the first subclause, deals with short term obligations. Clause 26, subclauses (2) through (6), are all concerned with that problem. It is very complex.

The Chairman: I should think that anybody likely to be affected by this might simply ask how much it would take to settle rather than having to work it out.

Mr. Cohen: I should say, Mr. Chairman, to the best of my knowledge, this is a very, very, small market in the sense of the number of people involved, and they are all professionals.

The Chairman: But they may be large sums.

Mr. Cohen: Yes, they may very well be large sums. However, all those involved are professionals and can handle this set of rules. It is really members of the Investment Dealers Association who will be dealing with this. These are not the type of arrangements which individuals become involved in, particularly this sell-and-buy-back arrangement. That is a very sophisticated way of corporate financing.

The Chairman: It runs to four or five pages.

If the effect of these rules is to catch the interest as it goes out of the country, how do you catch the discount?

Mr. Cohen: In the same way. The basic change, Mr. Chairman, is that before the amendment we were catching the interest at the time that the company issued the obligation. We were catching it up front, if you will, and we have now worked out a set of rules whereby we catch it when the interest does cross the border instead of at the time when the note is issued. We were catching it up front because that was the only way we could figure out how to get it.

The Chairman: If a non-resident bought a note in the amount of \$1,000 at 6 per cent interest, that would be a fairly simple transaction. However, if, instead of collecting the 6 per cent interest he sold the note back to somebody in Canada, where, then, do you catch the interest? He gets it in the price for which he sells the note.

Mr. Cohen: That is where we catch it also, Mr. Chairman. My numbers may not be accurate, but suppose he sells it for \$106, assuming it is a 365-day note—

The Chairman: Whose obligation is it to pay it at that time? The non-resident is not within your reach.

Mr. Cohen: No, but we manage to pin him down. We collect at the time the \$106 paid.

The Chairman: You make the person in Canada who buys that note the agent?

Mr. Cohen: Initially, Mr. Chairman, the obligation is that of the issuer. He is going to pay somebody \$106 at same point in time, so our starting point is that the issuer is responsible for it. We will collect it from the seller, that is, the owner of the note, when it is sold back into Canada, and we will credit that against the issuer's obligation.

Senator Cook: The issuer will seek to deduct that, will who issues the obligation, whether it pays the American by interest or by discount, would have a deductible item in due course as far as income tax is concerned, would it not?

Mr. Cohen: If it is paid by way of interest, of course, it will be deductible. If it is paid by way of discount, then it may or may not be deductible. It all depends to what extent there is an interest factor.

Senator Cook: In most cases you have a guide, do you not, that some interest is to be paid or something is paid to the non-resident?

Mr. Cohen: Yes.

Senator Cook: So that is how you check up on it.

Mr. Cohen: This works to some extent. It depends on the co-operation, frankly, of the brokers. The Investment Dealers Association has assured us that they will co-operate with us, recognizing, of course, that if they do not co-operate with us we will go back to the old regime and collect it at the beginning.

Senator Beaubien: So you would collect it, really, before the interest is earned?

Mr. Cohen: That is right, and that is what we are now not going to do.

Senator Beaubien: Now you will collect it on the interest earned?

Mr. Cohen: That is right.

Senator Beaubien: And you are satisfied and they are satisfied?

Mr. Cohen: Yes.

Senator Cook: Once you do claim a tax on it, does that not then put it into the category of a deductible expense as far as the issuer is concerned?

Mr. Cohen: No. It has nothing to do with whether or not it is deductible to the issuer in terms of computing his income. If it was an interest-bearing note, the interest was always deductible. That was never in issue. Withholding tax, senator, is really an obligation on the part of the foreigner.

Senator Cook: Yes, I realize that. But if there is a withholding tax on a sum paid by a Canadian citizen, he does not get any deduction in respect of that?

Mr. Cohen: Yes. The classic example would be a dividend.

Senator Cook: But I am talking about this thing here.

Mr. Cohen: No, this would not be deductible to the issuer. The interest would be deductible, but that was never a problem. The answer to your question is: Yes, it is deductible.

Senator Cook: I am trying to determine how you check and cross-check.

Mr. Cohen: With great difficulty.

The Chairman: Moving on now to clause 27.

Mr. Cohen: Clause 27 deals mainly with the ability of the Governor in Council to make a regulation reducing the amount of the withholding tax that might otherwise be applicable. This goes back to clause 26. It is part of the discount obligation problem.

The Chairman: Fine.

Now, we come to the ITAR. This is an explanation of the roll-over in connection with amalgamation, is it not?

Mr. Cohen: This, Mr. Chairman, carries the neutral zone through in a roll-over situation. In other words, it does not expand the types of transactions where there are roll-overs. However, where there are roll-overs, one of the problems that was outstanding to us was that, even though one did not get a realization on the capital gain as a result of the transaction, the neutral zone was lost. What this clause is doing, with respect to transactions where there are roll-overs on amalgamation, is carrying through into that transaction the neutral zone protection. It is quite beneficial and quite relieving for the taxpayer.

The Chairman: I am glad you have provided some relief, even though it took three pages to do so.

Mr. Cohen: It took a lot of words.

The Chairman: What about clause 29?

Mr. Cohen: Clause 29 is one of the provisions that was of interest to the Senate previously. This provision deals with the deferred income plans—principally, deferred profit-sharing plans. This clause would shift it from the amount vested on January 1, 1972, to the amount to your credit on January 1, 1972, insofar as a payment out is eligible for averaging under section 36. There was a problem with lump sum payments.

The Chairman: I am quite familiar with those lump sum payments.

Mr. Cohen: That is what this clause is all about. The individual had a certain amount vested to his credit but he could not get a larger amount "vested" because, for

example, he had to be there 10 or 20 years. There were time factors running, and things of that sort. This changes the amount of the lump sum required for section 36 averaging from the amount that is vested to the amount that is, in fact, credited. "Credited" means the amount that would be vested if there were no time limitations running against it.

The Chairman: So that clause is certainly beneficial to those people in such plans.

Mr. Cohen: Yes, Mr. Chairman.

There is one last clause, and that deals with the problem I spoke of earlier concerning the refunds for the mutual funds corporations. They had to get their refunds out by the end of the year. This was not possible, so we gave them an extra 60 days. This is just a transitional rule to deal with the extra 60 days for the first year of the new system. There were special problems, so we gave them an extra 60 days.

The Chairman: The first year of the new system would be 1972?

Mr. Cohen: No, Mr. Chairman, let me correct that statement. This provision is effective for the 1st year after the enactment of Bill C-193.

The Chairman: I have no further questions. I think the end-up of the deferred profit-sharing plan has been a very good result. There was quite a battle at different stages in order to get the kind of relief that we felt was needed. It just goes to show that we can be stubborn.

As you know, this bill is not yet before the Senate. By the time it gets through the other place we will have made a report to the Senate on this sitting. When the bill does come to us, as a result of this sitting and the transcript of the evidence which will be prepared, our consideration of it will take less time. It was very useful for us to have you appear before the committee today. It is far better that we get our work done now instead of spending another week in Ottawa weather in July.

We do not make a decision at this time. We just close the evidence, subject to re-opening, and await the bill.

There is one question I should like to ask you, and that is with respect to Bill C-192. We have yet to make our report to the Senate on our study of that bill. The report is drafted, although not yet approved by the committee. However, we do not know what the amendment is going to be. I understand the minister was going to move an amendment.

Mr. Cohen: I really cannot say very much about that at this time, Mr. Chairman.

The Chairman: Well, if you are a prophet or a son of a prophet, perhaps you could tell us when that amendment is likely to be dealt with, because we should like to put it in our report as soon as possible.

Mr. Cohen: The other place, as I understand the schedule, will be in Committee of the Whole next Tuesday

on that bill. I would certainly think that by Tuesday they will have completed their deliberations on it. I could be wrong, but I would think that by Tuesday evening the amendment will have been moved.

The Chairman: Fine.

Senator Connolly: This is a government amendment, is it?

Mr. Cohen: Yes. The minister announced that he would move an amendment in Committee of the Whole.

The Chairman: Thank you, Mr. Cohen.

Mr. Cohen: It is always a pleasure, Mr. Chairman.

The Chairman: We will terminate the sitting.

Senator Connolly: Do we have to make a report, Mr. Chairman?

The Chairman: Perhaps we should adjourn the sitting to the call of the Chair, which will not be before next Wednesday.

Senator Cook: Who do we have on Wednesday, Mr. Chairman?

The Chairman: I offered to extend the sittings until next Wednesday in order to hear from the Province of Newfoundland. However, I was informed during the noon hour that those concerned would not be able to accommodate themselves to that date. I asked them to address a letter to the committee setting out their points. I told them that my guess would be that they would be similar to those covered by the Maritime provinces and Quebec. The deputy minister, with whom I was speaking, told me I was right on the nose.

Senator Connolly: Do we have any information regarding the attendance of the minister with respect to foreign take-over bids?

The Chairman: The minister laid down a sort of rule to me, which I feel should be accepted, that he did not feel he could attend here while the bill is in the Committee of the Whole in the other place. I informed him he might end up by not being here while we are discussing the bill.

Senator Connolly: I wonder if the precedent established for other ministers in the case of the tax reform legislation would help him? We had Mr. Benson appear while we were considering a bill before we were officially seized with it. In my opinion, the Minister of Industry, Trade and Commerce could apply that precedent.

The Chairman: What he would or what he should is not as important as what he said. He said that it might be embarrassing for him to make statements here while the bill is under discussion clause by clause in committee in the other place.

Senator Connolly: So long as he does not have too high a priority for early passage of the bill.

The Chairman: Even if the minister does not manage to appear before the committee, I believe we would go ahead and table our report anyway. I have informed the committee that the minister has asked if I would meet with him and indicate the nature and extent of the amendments we would propose. I agreed that I would be in a position to do so next week, but I will not do it until the committee approves the amendments. I informed him that maybe at the same time we would wish to table our report in the Senate.

Senator Cook: Plus the fact that some members of the committee intend to vote against the bill altogether on second reading.

The Chairman: That may be; you never know.

Senator Cook: I believe one member intends to do so.

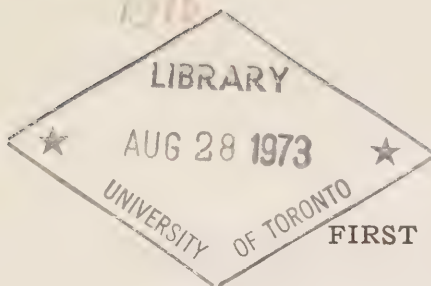
The Chairman: We are not in a position to vote for or against the bill. We are simply reporting on its potential effects and changes we think should be made. The voting you refer to will take place when we receive the bill.

We will adjourn to the call of the Chair.

The committee adjourned.

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1973

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 19

WEDNESDAY, JULY 25, 1973

**Complete Proceedings and Report on Bill C-4 intituled:
"An Act to amend the Fisheries Development Act"**

(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker (20)

**Ex officio* members

(Quorum 5)

Order of Reference

The Honourable Senator Carter moved, seconded by the Honourable Senator Molgat that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, July 25, 1973.

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 10.00 a.m. to consider and report on Bill C-4 "An Act to amend the Fisheries Development Act".

Present: The Honourable Senators Hayden (*Chairman*), Connolly (*Ottawa West*), Desruisseaux, Flynn, Gélinas, Macnaughton, Molson and Smith. (8)

In attendance: E. R. Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Department of the Environment:

Mr. John Mullalley, Director,
Provincial and Federal Affairs,
Fisheries and Marine Services;

Mr. O. M. Linton, Chief,
Enforcement and Operation,
Inspection Branch.

It was proposed by Senator Smith and *Resolved* that Bill C-4 "An Act to amend the Fisheries Development Act" be reported without amendment.

At 11.15 a.m. the Committee adjourned to the call of the Chair.

ATTEST:

Georges A. Coderre,
Clerk of the Committee.

Report of the Committee

Wednesday, July 25, 1973.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-4, intituled: "An Act to amend the Fisheries Development Act", has in obedience to the order of reference of July 24, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,
Chairman.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, July 25, 1973.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-4, to amend the Fisheries Development Act, met this day at 10 a.m. to give consideration to the bill.

Senator Salter A. Hayden, (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have a quorum, and I call the meeting to order. We have one bill before us this morning, Bill C-4, An Act to amend the Fisheries Development Act. Our witnesses are Mr. John Mullally, Director, Provincial and Federal Affairs Branch, Fisheries and Marine Service, Department of the Environment, and Mr. O. M. Linton, Chief, Enforcement and Operations, Inspection Branch, Fisheries and Marine Service, Department of the Environment.

I believe Mr. Mullally has a short opening statement, and then we can get down to questions.

Mr. John Mullally, Director, Provincial and Federal Affairs Branch, Fisheries and Marine Service, Department of the Environment: Mr. Chairman and honourable senators, I shall make a brief statement, largely the same statement that the Minister of Fisheries made before the Standing Committee on Fisheries and Forestry of the other place on June 19. Senator Carter may have touched on many of these matters when he introduced Bill C-4 in the Senate last night.

We will also make available to the members of the committee a draft copy of the regulations that have been prepared, a copy of an application form that is ready for distribution as soon as this bill is passed, and a copy of the contract, of which we have a limited number, proposed to be signed as between the department and the individual or company participating in this program. We also have some information on the number of facilities that we see as being necessary at this time right across the country, broken down by province, by size of facility, the estimated cost and so forth.

The Chairman: The application of this legislation is not confined to the Maritimes?

Mr. Mullally: No, this is a national program designed to operate in all parts of the country. In the list that we will provide to you, you will notice that we have identified requirements in all of the provinces. It varies from province to province, with the larger number of requirements being in Newfoundland and Nova Scotia.

I might begin, Mr. Chairman, by saying that the act we are amending, the Fisheries Development Act, was

passed in March 1966. Its origin may be traced back further to a federal-provincial fisheries conference held in 1964, attended by representatives of all the provincial fisheries administrations as well as by the federal Fisheries Service. It was agreed there that there should be a national fisheries development program; that is to say, a development program as distinct from research into fishery matters, inspection and so on.

Prior to the introduction of the Fisheries Development Act, programs of assistance to the fishing industry were implemented through specific appropriations and not under a specific piece of fisheries legislation. Passage of the Fisheries Development Act empowered the Fisheries Service to take initiatives in all aspects of fisheries development.

The Fisheries Development Act of 1966, for example, enabled the Fisheries Service to undertake development programs of exploration for known fisheries and entirely new fishery resources, the introduction and demonstration of new and improved fishing vessels and fishing techniques, the development of new fish products and the improvement of product handling, processing and distribution, and a wide range of development programs including a very important one, that is, providing financial assistance for the construction and equipment of fishing vessels. In addition to that, we undertook a substantial number of cost-shared programs with the provinces in the development field.

What we are proposing now in Bill C-4 is an expansion of this development program to extend the powers and the development thrusts to provide Canadian fishermen with ice and chilling facilities, a capability which will enable fishermen to maintain the quality of their fish and hence obtain a higher price for their product and improve their incomes.

Bill C-4 enables the government to make grants equal to 50 per cent of the cost of such fish-chilling facilities, but not to exceed \$25,000 for any one applicant in any one port or location. The grants are payable toward, first, the cost of construction and equipping ice-making and ice-storing facilities ashore; second, the capital cost, that is excluding the cost of installation, of refrigerated seawater units in fishing vessels. The real purpose of this legislation is to increase the earnings of fishermen, especially the smaller, inshore fishermen operating in the more remote and scattered locations around our sea coast. These fishermen operate what are generally referred to as day boats, since they traditionally go out to their fishing grounds in the morning and return to their home ports in the evening to land their catches.

At the present time it is estimated that nearly 100 million pounds of fish are rejected annually by the inspection officers of the Federal Fisheries and Marine Service as being unfit for human consumption. This loss is largely due to inadequate chilling between the time the fish is caught and its delivery to a processing plant or its ultimate market. In addition to this total loss, more than 50 per cent of the inshore fish landings are currently of second quality. This also amounts to a large loss of income for fishermen because of the lower price commanded by second-quality fish in the market. The economic loss to the fishing industry, because of fish being rejected as unfit for human consumption and, secondly, the reduction in fish quality that is fit for human use, is estimated to be more than \$25 million annually at the present time. These heavy losses are directly attributable, for the most part, to the spoilage of fish aboard fishing vessels and during its transportation to the processing plants. This spoilage occurs because of the almost total lack of ice available to inshore fishermen in most parts of Canada. The magnitude of the problem can be appreciated when it is realized that approximately 45,000 small inshore and offshore fishing boats operate on both coasts and in our inland fisheries. A recent survey has indicated to us that \$9 million worth of additional ice-making equipment, capable of producing approximately 2600 tons of ice per day, is required across Canada to satisfy the needs of these inshore fishermen. We have identified, initially, approximately 370 locations as requiring additional facilities of this kind, with the provinces of Newfoundland and Nova Scotia heading the list.

The final decision on the location of these ice-making facilities will be made after a very close consultation with local fishermen's groups and fish processors. We have already had preliminary discussions with the provincial officials and with representatives of the fishing industry.

The government has decided that this program is necessary, and that government assistance is necessary as an incentive, because the secondary industries, the processing industries—have not made ice available where it is required, and the fishermen themselves are not in a position to undertake the capital cost involved.

We have drafted, and have discussed with the industry and, of course, with other departments, regulations, and if honourable senators wish, these could be made available.

The estimated cost of the program over two years is \$9 million, and with the 50 per cent grant, of course, the cost to the federal treasury is \$4.5 million.

Mr. Chairman, I will conclude with those few remarks and entertain questions in whatever manner you wish to proceed.

The Chairman: I take it that the 100 million pounds of rejected fish to which you referred is taken from inland waters throughout the country. What would be the total production of which this constitutes a part, and what percentage is it?

Mr. O. M. Linton, Chief of Enforcement and Operations, Inspection Branch, Fisheries and Marine Service, Department of the Environment: It is approximately five per cent of the total Canadian landings, sir, which total slightly in excess of 2 billion pounds per year.

The Chairman: So you are referring to five per cent. Is the rejection mainly related to the small boats and the small fishing operations?

Mr. Linton: This is primarily the problem with day boats, which go out normally in the morning and return in the evening. The major problem, I would suspect, lies in the trap fishing in Newfoundland and partly in south-west Nova Scotia, then extending right across the country to the inland fisheries and the West Coast.

The Chairman: What is the production of the day boats to which you say the problem is confined?

Mr. Mullally: That is probably more difficult to break down, senator. We might hazard a guess that the small or inshore fishing boats which we are discussing would land half, as an estimate.

The Chairman: Half of what?

Mr. Mullally: Half of the total landings.

The Chairman: I would like to relate the percentage of landings by the day boats to the percentage of rejections of their catch.

Mr. Mullally: I think if we took it as a percentage of the catch of day boats it would be a higher percentage. The 2 billion pounds is total landings by both the larger and the smaller boats. We should point out, senator, that there is also fish rejected from the catches of the larger vessels. We do not suggest that all the losses are restricted to the small day boats or the small inshore boats. Quite substantial quantities of fish are rejected from the catches of larger vessels. In their case, however, it is not due to shortage of ice, but carelessness and remaining at sea too long; it is not that ice is not available. In the larger ports the vessels go out to the grounds and stay two or three days, some up to 10 days or two weeks. There is plenty of ice available to these vessels before they go fishing. They also, however, have losses. It is not because ice is not available, but because it is not used properly, or for a variety of reasons. So the losses to which we refer are not restricted to small boats.

The Chairman: The 100 million tons rejected is not entirely related to the day boats?

Mr. Mullally: No, I would think it is principally the day boats, but part of it would be from larger vessels.

Senator Molson: Has the take of the day boat been declining over the years?

Mr. Mullally: As a generalization, senator, in the last few years, both inshore and offshore, the total landings have been declining.

Senator Molson: I am referring to the day boats.

Mr. Mullally: It probably has been declining, senator. I believe Senator Carter would agree that in Newfoundland the inshore fishery and the cod landings have been declining. It is difficult to distinguish, as we do not divide landings by size of boat. This is the best information that we have from our fishery officers and inspection staff, who are located at most of the landings and processing plants in all parts of the country.

Senator Molson: One reason for my inquiry is that I was recently at the Baie des Chaleurs and was told there that the new, modern boats, particularly the draggers which are now operating, have so effectively scratched the bottom that the local fishermen in their day boats are not catching any fish and so are not fishing. Almost every type of fish, including lobster, is extraordinarily scarce. Is it a fact that such vessels operate inshore and affect the fishing of the small day-boat operators?

Mr. Mullally: As a general statement, that is correct. The catches and the fishing effort by the larger vessels, of course, are having an effect on the inshore fishery. This has been particularly bad in the area you mention.

Senator Molson: Why are they not kept farther out?

Mr. Mullally: Vessels over 65 feet in length, for example, must remain a certain distance out. Even if they keep well offshore, however, they catch fish which might have eventually moved inshore. There is not much doubt about that as a generalization.

Senator Molson: Are arrests ever made for infractions of these regulations?

Mr. Mullally: Yes. As a matter of fact, we arrested three vessels off the coast of Newfoundland earlier this year.

Senator Molson: I mean, for that type of fishing?

Mr. Mullally: Yes, a larger vessel fishing inside the limit.

Senator Molson: Which affects the livelihood of a number of smaller fishermen.

Mr. Mullally: Yes, in fishery management one of the major problems is the confrontation between larger, more mobile offshore fishing vessels equipped with better fishing gear and the smaller, inshore, less mobile vessels. The reconciliation of the two has become a major problem which is faced daily.

The Chairman: Are the funds provided by this bill proposed to be used by the day-boat fishermen?

Mr. Mullally: The funds are to provide ice-making equipment and storage. The purpose of the program is to install ice-making facilities in order that ice will be available to fishermen before they leave for the fishing grounds. They would take ice with them, and as they catch their fish they would put them in ice and keep them in ice until they bring the fish to shore, and then

they are transported by truck or vessel to the processing plant. They would be kept in ice during that time.

Senator Desruisseaux: My question is related to the methods they employ, and the comparison with the Russian or Japanese methods of fishing. I would appreciate your comment on whether or not we are a little old fashioned in our methods, and whether this has anything to do with what is happening with respect to the cut-down in cod fishing, and so on.

Mr. Mullally: No, I do not think so, senator. I am told that the Canadian fishing vessel and the Canadian fisherman is as good as, and as modern and well-equipped technologically as any of the foreign fleet. We are out-fishing all the foreign fleets on the Atlantic coast per day at sea, or per unit of effort, or any way you want to measure it. They have huge fleets, in number, and certainly they have modern and sophisticated equipment and processing vessels. We are not being outfished per man, vessel, or any other unit of measurement. Our technology and fishing methods are modern and competitive. Some of our people would say they are better than those of other nations.

Senator Desruisseaux: I am pleased to hear that said, because we are not left with that impression in the articles published by the press on foreign vessels fishing our waters. The three vessels that were intercepted and fined, were they foreign owned or were they Canadian owned?

Mr. Mullally: The three that I mentioned were ones that came to mind. They were Canadian owned vessels. I think there was one foreign vessel at the same time. It was in the southwest area of Newfoundland, off Port aux Basques. There were three Canadian owned vessels and one foreign vessel in that particular instance, as I recall.

Senator Desruisseaux: If there were a foreign vessel fishing in our waters irregularly, would it be immediately stopped?

Mr. Mullally: Yes. It is very difficult, with such a large coastline, to watch all fishing activity. I think, as a general statement, that foreign fishing fleets observe the limits rather religiously. However, the limits are not very far from shore. They are 12 miles from straight base lines. That is not far out; fishing vessels can be seen from land. In particular atmospheric conditions, to fishermen they appear to be just over the cliffs, not far out.

Senator Desruisseaux: Was there a mercury incidence in the rejection of the fish you mentioned, the loss of 100 million pounds of fish?

Mr. Mullally: That loss, senator, would not include fish rejected because of contamination from mercury or otherwise. This was spoilage.

Senator Smith: I should like to say, Mr. Chairman, that I find it very pleasant that Mr. Mullally is here representing the minister. I wish to explain to the

committee that he has had a very pleasant association with the department for many years as the minister's executive assistant, and has thereby gained a great deal of knowledge in the operation of the department. He is also a Prince Edward Islander, which does not do him any harm. I think the department is very well served by him. I have great confidence in him. I do not agree with everything he says, and there have been occasions when he has not agreed with my views; but he is a charming man, and he may charm me so much that I will not be as critical as I was last night, when I had occasion to make some extemporaneous remarks in the Senate.

I regret that because of the time factor involved in considering legislation at this point in the session, we did not have at least another day so that Mr. Mullally and officers of the department could have the opportunity of examining what I said. I do not claim to be an expert even in my own profession, which I have not practised for many years. I am certainly not an expert in fisheries. As I said last evening, I have lived all my life by the sea, and known the sea and those who make their living by the sea. I have a feeling for the sea, and I hope I have an understanding of the reactions of small-boat fishermen, because it is from small-boat fishermen and dory fishermen that I have received my education in the fisheries of this country.

I had an opportunity to discuss certain points with Mr. Mullally before the committee meeting. The bill is fine, but I think we may be able to improve it. However, I am concerned about the assumptions which I gather were being made with respect to the reasons for bringing this bill forward. If I can express myself perhaps a little better than I did last night, the burden of responsibility seems to be almost entirely on the small-boat fishermen for the 100 million pounds of fish being rejected for human consumption.

The Chairman: The witness has not said that.

Senator Smith: I thought I heard him say that.

The Chairman: He said that the total of rejected fish would be 100 million pounds.

Senator Smith: But he was asked another question.

The Chairman: I asked him what percentage of that might be from day boats. He indicated a larger figure than the overall 5 per cent, but he did not give me a particular estimate.

Senator Smith: Let us get back to what I said last night, and to my reason for questioning the bill and asking that it be sent to committee. A disproportionate amount of the responsibility for a situation which has resulted in 100 million pounds of fish being rejected would seem to lie on small boat operations, when the bill is concerned with small boat operations. This morning I glanced through notes from the department, which seemed to indicate that this was the effect of the policy. I wish some of you could walk down to some of the big druggers, wait until they take out the first couple of

layers, and run their hand over the fish that lie towards the bottom of the boat, and these honourable senators would know where the responsibility lies. I do not know how much of that gets rejected. Perhaps this is because, as Mr. Mullally pointed out, some of the boats stay out too long. If that happens, it is the big ones and not the little ones, and certainly not the day fishermen. The day fishermen leave before daybreak and are back in the afternoon.

The water from which the fish come is cold. It is a hand line operation or they set the trawl fairly deep in the water. It is not surface fishing; it is very cold water to start with. They put the fish in boxes, and sometimes they have ice and sometimes they do not. They are more inclined to put ice in if it is warm weather—and if the water is warm these men are not inclined to go fishing.

I am puzzled by these assumptions, and I want to be in a position to explain to my many friends along the coast of Nova Scotia that the bill has not been introduced as a result of criticism directed towards them.

The Chairman: Let us ask Mr. Mullally to break down the figure of 100 million pounds of rejected fish. How did you arrive at that figure?

Mr. Mullally: It is a difficult question. I do not think that we are pointing the finger at anyone and saying, "You are the villain," whether they be small boats or large boats. As I mentioned earlier, certainly in the larger vessels we do have quantities of fish rejected. I said that in relation to those vessels it is carelessness for the most part, or bad management, because ice is available. The facilities and equipment are there to provide ice. The problem arises in their use of it. We expect, of course, that the industry—the companies operating the vessels—particularly with the high price of fish today, will take strong steps and measures to ensure that no fish is lost. It is too valuable to lose. We are not pointing an accusing finger at the small boat fishermen. I was mentioning to Senator Carter earlier that when I was with the minister in Fogo Island about a year ago we saw a large schooner loading ground fish for movement from Fogo Island down the coast, and it had thousands of pounds of fish aboard with no ice. I think that anyone who has visited small fishing communities in Newfoundland or other parts and has seen boats coming in and the fishermen forking their fish up or moving it in boxes, generally, will agree that it was not well taken care of.

Perhaps Mr. Linton can give further information on the breakdown on this figure. We did not expect this to be the principal concern of the committee. We felt that the features of the bill itself—the financial features, the regulations, and how it was going to be implemented—were of principal concern to the committee, so we have not focused particularly on this aspect of it.

The Chairman: The "why" of this bill is just as important to us as how you are going to carry it out.

Mr. Mullally: Very much so, Mr. Chairman. But the information that our officers have provided as to the

quantity of fish rejected each year is as a result of the fish not being properly taken care of.

I will ask Mr. Linton to comment on this, but I would hesitate to attempt to break it down between size of vessel—whether it is the small inshore vessel or the larger offshore vessel—simply because I am not sufficiently informed on that aspect. It varies too a great deal from one area to another. The part of Nova Scotia from which Senator Smith comes and about which he is very knowledgeable, for example, may involve different kinds of fish, or there may be better care taken of the fish, or they may be very close to the fish plant, so the time factor in transporting the fish to the plant is not a long one. There are many factors which enter into it.

Senator Smith: On this point, Mr. Chairman, in order to keep the record running along in a smooth fashion, Mr. Linton did mention the southwest coast of Nova Scotia.

Mr. Mullally: I will ask Mr. Linton to elaborate further on that point. It is his Inspection Branch that inspects the fish and has to make the decision as to rejection or otherwise.

Mr. Linton: I did mention, Mr. Chairman, that the major problem is in the inshore fishing in Newfoundland. I also referred to southwest Nova Scotia. We had a meeting with the industry several months back at which representatives from southwest Nova Scotia were in attendance. The landings in that particular area—I am thinking specifically of the Cape Sable Island area—run from 25 million to 30 million pounds a year, and it was mentioned at that meeting by inspection officials that our estimate of rejection of fish coming into that area each year during the summer months was, perhaps, 40 per cent. Also, one of the major processors in attendance at that meeting said that that was a very conservative estimate.

The Chairman: Why, then, do they bring it in?

Mr. Linton: Well, they attempt to land whatever they can catch, really.

The Chairman: If it is not in marketable condition, it seems to me to be a wasted effort.

Is there any provision for compensation when you do reject?

Mr. Linton: No, Mr. Chairman.

Senator Desruisseaux: It is still marketable for some definite purposes, is it not?

Mr. Linton: A lot of it goes for fishmeal.

Senator Smith: I can understand the comment regarding Cape Sable Island, because there is another factor involved which is that the boats coming in are sometimes delayed because of the Fundy tides. It may be that the boats in that situation should have to comply with a regulation providing that they have to have some type of

cooling process or an icing process on board. A good deal of the fish landed in that area is intended to be salted fish, and that is a different story again; they are inclined to be gutted as soon as landed.

The Chairman: Senator Carter.

Senator Carter: There are two points I should like to clarify, Mr. Chairman. Is it fair to say that when the fish is brought to land, the quality of fish coming in on the small boats is pretty well as good as and sometimes better than that brought to land by the larger boats, and that the spoilage takes place between the landing and arrival at the processing plant, due to the distance from the plant and the amount of handling, the time involved in the transportation of it, and so forth?

Mr. Mullally: Yes and no, senator, if I may put it that way. Spoilage starts, unless fish is properly taken care of, the moment it is landed in the boat, or very shortly thereafter. I suspect it begins to get soft, or otherwise, from that point, unless it is properly taken care of. It is difficult to pinpoint it and say that spoilage starts after it has landed or during the period of transportation. I think it is one total movement from the time the fish is caught and landed in the boat until it is placed on the processing table and put into the finished product.

Senator Carter: I was comparing the fish brought to land by the small boats, which is probably every day, as compared with the quality of fish brought to land by the larger boats which are out to sea, perhaps, a week or more.

Mr. Mullally: Top quality fish can be brought in even though the boat is out to sea a week or ten days. The key point is how it is handled from the time it is caught. Fish can be kept in ice and the quality maintained for a relatively long period of time. The initial effort to chill the fish is very important.

It is difficult to generalize in these situations. If the fish is transported 50 miles in an open truck from a small outport in Newfoundland to a processing plant, then there is no question that that would result in spoilage. However, in Senator Smith's area they may well land at the wharf and go directly to the processing plant. So it is difficult to generalize. Certainly, proper care of the fish begins when it is landed in the boat and continues through the transportation and processing stages.

Senator Carter: The purpose of this bill is to provide ice in the small boats and for holding units on shore to keep the fish chilled while it is being held.

Mr. Mullally: The purpose of the bill is to provide ice-making facilities so that the ice is available to the fishermen and can be taken out in the boats when they put to sea, so that once the fish is landed in the boat it can be iced. On returning to shore additional ice would be needed due to melting and to keep the fish iced while being transported to the processing plant or to the market, or whatever the case may be.

Senator Smith: I should like to ask a question on the point raised by Senator Carter.

The Chairman: Senator Carter has not finished yet.

Senator Smith: I had not finished either, Mr. Chairman. However, that is all right.

Senator Carter: Is the calculation of this 100 million pounds of spoilage based on a percentage of the total catch?

Mr. Linton: That is right, senator.

Senator Carter: An average percentage of the total catch?

Mr. Linton: Yes, senator.

Senator Carter: The Inspection Service is divided into regions, I take it?

Mr. Linton: Yes.

Senator Carter: And do these regions report every month or annually the amount of fish rejected? In other words, do you have statistical information on a monthly basis?

Mr. Linton: We can certainly get it, senator.

Senator Carter: So you can break it down regionally, given sufficient notice?

Mr. Linton: Yes, senator.

The Chairman: Would you provide us with such a breakdown?

Mr. Mullally: Yes, Mr. Chairman.

The Chairman: Senator Smith.

Senator Smith: Perhaps this question should be directed to Mr. Linton. For some time now I have been under the impression that there is some kind of regulation prohibiting the long-distance trucking of fish, except under specific circumstances. Are there any regulations as to how far one can truck fish to a processing plant?

Mr. Linton: There are requirements, senator, governing the trucking of fish, and there are requirements concerning the icing of fish aboard vessels. However, we have not attempted to enforce those regulations because of the inadequacy of ice in the industry; it is just not available to the fisherman. It is not the fishermen's fault or the truckers' fault; it is simply not available. This is a one-shot program to augment the existing ice capacity in the industry. Once it is in place, the inspectors will be in a position to insist that the fish during all stages be adequately iced and protected from the elements.

Senator Smith: At all stages. So you would not have a time factor involved. Several years ago I talked to the operator of a fish plant who attempted to move fish from a large, public wharf out to his plant, a distance of about 15 miles, and he was warned by the fish

inspector that he could do so except during warm weather, at which time he would have to put a halt to it. Do you have that problem under the regulations?

Mr. Linton: We could insist on it at the moment, but it would not be fair because there just is not the chilling facility available for the industry.

Senator Desruisseaux: Do I understand that the fish is transported in trucks that are not refrigerated?

Mr. Linton: That is right, quite frequently. In a lot of cases the fish is not iced.

Senator Smith: I have another question that is of some importance, to me anyway. Reference was made to the fact that there have been consultations with the industry. Just who do you mean by that? Those who own the fish plants or those who go out in small boats to fish? I have never heard of any consultations.

Mr. Linton: In August last year there was a meeting in Halifax, primarily with processors and the provincial representatives. I am speaking about the Nova Scotia area. Earlier this year there was a second meeting in Halifax. One day we met with industry representatives and a few fishermen attended that meeting. The following day there was a meeting primarily for the fishermen and, vessel owners, and a few processors attended that. We had a fairly good turn out at both meetings.

Senator Smith: The only meeting held was the one in Halifax? There was no meeting held in any other part of the province?

Mr. Linton: No, but during the next few months our regional people will get down to the community level to discuss future plans of the Inspection Branch, to get into more detail on the ice chilling facility assistance program.

Senator Smith: After you get the bill?

Mr. Linton: Yes, sir.

Senator Smith: Then you will be acquainting the industry. The small boat industry, as I recognize it, is comprised of people who own small boats and go fishing every day. You mentioned the lobster industry. I remember reading in the press of a protest meeting held by some 2,000 fishermen because they did not understand what was going on. I am not critical of the officials, because it is the responsibility of the minister, I believe, to give directions on this point. Here we will eventually have a bill whereby small boat fishermen will have to pay one-half what it costs to make it possible for him to keep his fish in better shape coming into shore, and also, as I understand it, to pay for the entire cost of the installation of any kind of cold water refrigeration or cold system on the boat. I therefore think he should be consulted ahead of the industry. If you want to consult the industry, you had better talk to the president of the company. You should talk to the small fishermen themselves. What distresses me is that the little people,

uneconomically speaking, are never consulted until it is too late.

The Chairman: If the day boats are not equipped to make use of the ice, you are just throwing the money away.

Senator Flynn: This bill will not cure that situation.

The Chairman: No.

Senator Smith: The so-called day boat fishermen will have difficulty in taking aboard that extra volume of ice for the second half of his catch, because he will have no room for the fish. The whole boat is down to the gun-wales with fish if he has had a good day. This is the problem. If I were a fisherman confronted with this problem I would want to know where I fitted, because you would be taking me off the sea.

The Chairman: The answer to your question appears to be that the small boat is for the purpose of catching fish so that the owner can realize some income. If they carry on the way they are, there will be a lot of spoilage. If ice is available they must have the facility to use it. If it means their catch will be reduced, their percentage of rejection should be reduced too; therefore their realization on their catch should be at least as good.

Senator Smith: I do not want to argue the merits of the various sectors of the fishing industry, but sometimes one gets an impression, as a political observer of the scene, of some fellow who has the responsibility and is paid to go there and see exactly what the situation is. I respect Mr. Linton and his staff; I have never had any quarrel with them, because they are doing their job. He mentioned Cape Sable Island. Not all the boats will go ground fishing in the off-lobster season; they have made their pile and they go to the baseball game or play golf in the summer, particularly with the high price of fish. Most of the boats that go fishing in the off-lobster season deliver their fish to plants that are equipped with ice-making facilities. I do not think they can use that as an excuse for not bringing in better fish than they apparently do. Another question in my mind is...

The Chairman: Was that just a comment or was there a question connected with it?

Senator Smith: I do not suppose there is any question in it. I am questioning the conclusions arrived at by the department as a basis for this bill.

The Chairman: Are you questioning the need for this help?

Senator Smith: Not in some areas. Senator Carter has talked to me about this bill since last night. There are areas of Newfoundland in respect of which the question of trucking has arisen, where they truck as much as 50 miles. I would not want to use that fish in the summer time. There was also mention of the figure of 50 per cent of the fish landed from small boat fisheries being second-grade fish. Let me give an illustration

of the other side of that. Perhaps I will get a comment on it if not an answer, because this is important. I have a personal friend, a neighbour, who some years ago was in a small boat fishery. He had a standing contract with the largest fish dealer in the city of Montreal. I have forgotten the name.

The Chairman: Desjardins?

Senator Smith: No. The name of one of the owners was Cohen. It was a family business that went by another name. My neighbour had a standing order for all the haddock he could send at any time that came from small boats. In other words, this wholesaler in Montreal had a ready market for all the small boat haddock he could get from that dealer. He did not have ice on the boats. There is some doubt in my mind whether or not damage is done coming from the water to the wharf or something else was happening to it later. Have you any comment on that?

Mr. Mullally: I would not think so. It is difficult to generalize, as I mentioned before.

Senator Smith: I am generalizing.

Mr. Mullally: Even if fish is kept out of the sun in an open boat, with a little ice, certain things can be done to preserve its quality, although certainly not as well as if there is a sufficient supply of ice.

You mentioned two things on which I will comment briefly. You spoke about the additional equipment required in a boat in order for it to be able to carry ice. For the small open boat I do not think this presents a great difficulty, nor expense to the fisherman. Frequently he will put his fish in a wooden box. Sometimes it is loose in the boat. There are available crates or boxes into which ice can be put, and it does not represent too great a problem. The quantity of ice does not present a storage problem. You mentioned the problem of the boat being full of fish and down to the water level. I think many fishermen like to have that problem, although not too many of them do, because the fish are not that plentiful. I do not think this presents a great difficulty. We estimate it takes about one pound of ice to look after three pounds of fish, so if the man has a ton of fish he would need 600 or 700 pounds of ice to look after it. We do not think there is a great difficulty there.

Senator Smith: That is another question. I would like to know what kind of regulations there will be. They are not going to be P.C. Orders so-and-so for quite a period of time?

Mr. Mullally: They are not at that stage yet.

Senator Smith: I understand it will be almost three years before you intend to put them into effect.

Mr. Mullally: I think you are speaking of other regulations. The regulations I spoke of are those that would be provided under this bill. They regulate the manner in which this program will be administered. I think you are referring now to the regulation dealing with fishermen's boats?

Senator Smith: Yes.

Mr. Mullally: That is a separate thing which we will be working on over the next couple of years. The other subject is one we are coming to. You mentioned consultations with fishermen. This is extremely important, and the minister has made it quite clear that there will be discussions with fishermen and with fish processors at the local level. We have not proceeded to a great extent, because until Parliament had approved the legislation and given the minister authority we felt we were probably extending beyond what we should be doing, if we should proceed very far with consultations or with any further move to implement the program. We went as far as we thought it was reasonable to go, pending passage of the legislation.

Senator Molson: I would like to get back to some of the items that were mentioned with regard to the details of the bill. I understand that the money in total will be \$9 million.

Mr. Mullally: That is the total cost, of which half—

Senator Molson: Half would be Crown money?

Mr. Mullally: Yes.

Senator Molson: Right. I understand that Senator Carter said last night that the demand was for 2,600 tons of ice.

Mr. Mullally: Per day.

Senator Molson: A capacity of 2,600 tons of ice. What sort of units are you contemplating, that are going to cost \$3,000 or \$4,000 per ton of ice-making capacity? I presume they will go from very small units of a few tons to some quite substantial ones. But for \$9 million, what do you contemplate?

Mr. Mullally: Mr. Linton can comment on the machinery side of it in more detail. The ice-making machines are categorized by producing a number of tons per day.

Senator Molson: I know that very well.

Mr. Mullally: It would be from 2 tons per day units up to 30 tons per day machines. There is a unit for 2 tons, one for 5, 10, 15, 20 or 30 tons. In some centres we may require only two tons per day; in other places they would require five tons and so on; whereas in the larger areas the requirement would be 30 tons.

Senator Molson: Even at 30 tons, it is a pretty small ice unit.

Mr. Mullally: Yes.

Senator Molson: That would be about the biggest size that seems to be necessary?

Mr. Mullally: I think that is about the largest.

Mr. Linton: Senator, our estimate would be that in the majority of the 370 locations that have been identified, they would require something between 2 and 10 tons per day, but some of them will be as high as 30 tons per day.

Senator Molson: You will have to build for those units? We are not just talking about ice-making capacity: we are talking about buildings, compressors and condensers, the whole thing? Is this sum of money meant to contemplate property to be acquired to put a little ice-making plant on it?

Mr. Mullally: Yes, senator, we will work with private industry, whether it is an incorporated or unincorporated company, or a co-operative or a group of fishermen, or an individual fisherman or a fish buyer, in setting up these facilities. The other half of the arrangement would be provided from the private sector. We are providing 50 per cent. For the most part, these will be built on the property of the processor or the company. It will be on private property for the most part, though we can conceive of occasions when it may be put on a government wharf.

Senator Molson: In these places where they have to truck 50 miles under adverse conditions, presumably they would be established as near the wharf as possible, so that for trucking purposes the ice would be available as well. Is that not so?

Mr. Mullally: Yes, whatever happens to be the best location for the ice-making facility in a particular area. Normally what happens is that the truck goes to the small outpost; it goes down the evening before or early in the morning and takes down the ice and picks up the fish when the boats come in the next day and brings the fish back. So you would not have the ice-making machinery in every fishing port. You would have to determine the most suitable location to best serve the industry in a given area. It would not be on every small wharf, but it would still serve the smaller wharfs in the manner I have indicated.

Senator Molson: On the question of maintenance and replacement of these units, that is not going to be the department's responsibility?

Mr. Mullally: No. They will belong to the private party.

The Chairman: Senator Molson, following up your question, I notice the wording of this amendment is:

for the construction and equipment of

(i) commercial ice-making and ice-storing facilities...

What is the connotation of the word "commercial"? Does that mean that they are going to collect a charge for supplying the ice?

Mr. Mullally: Yes. It would be expected that the supplier would charge the fishermen so much per ton of ice. We would enter into a contract with the company or the individual concerned, and as part of that contract it would be determined what he would charge the fishermen, how much per ton.

The Chairman: The day-boat fisherman will have to buy his ice and pay whatever the rate is. Now, have you any authority to regulate the rate of charges for the ice?

Mr. Mullally: We will enter into a contract with the supplier and as part of that contract we will specify the price per ton that he will charge a fisherman, and that price will be as close as possible to an economic price for the fisherman.

Senator Flynn: The word "commercial," I think, refers to the fishing "industry," and that a private fishing club could not get a subvention to obtain ice facilities. If the person applying for the subvention is in the trade of fish, he gets it. As you say, most of the fishermen sell their catch to someone who is equipped to provide ice. So, possibly, he does not have to pay anything for the ice. It could be part of the contract between them.

The Chairman: It may be part of the price.

Mr. Mullally: That is right. The fish buyer, the processor, the person with whom normally the fisherman deals, who buys his fish and supplies him with his requirements, may decide not to charge the fisherman. There is very keen competition among buyers to get supplies of fish. This may be an incentive, and it may be that the buyer will absorb the cost of the ice as part of the total cost.

The Chairman: Are there any other questions, or are you ready for the question on the bill?

Senator Smith: There is a question I do not think has been asked yet. In relation to the discussion in the House of Commons committee, it was understood that the minister was going to enter into an agreement making some provision for a better sharing of the cost of renovating the boats, in order to put in suitable equipment.

The Chairman: Senator Smith, you know that is not part of our terms of reference. We have the bill.

Senator Smith: I would like to argue that point with you a little bit.

The Chairman: The bill is before us as it was referred to us by the Senate, and that is what we are dealing with. What the minister may have in mind, or what he said in the other place, would not come under this.

Senator Smith: I take it that Mr. Mullally is here representing the minister, and I wonder if he would care to repeat what the minister said in the other place that he was prepared to do.

The Chairman: What went on in the House of Commons—

Senator Smith: Let us not be technical. Let me ask him in some direct fashion. I do not want to argue law with anybody. Is there any prospect of an amendment, at an early date, which would give a better financial deal for the fishermen, because of the cost of making alterations to their boats to accommodate new equipment which would be put in under the auspices of this legislation?

The Chairman: Let us understand, senator, first of all, that you are getting into the area of policy and the future plans of the department and the government. If the com-

mittee wants to do that, after all it is a committee and we can hear any evidence we wish, without being subject to any rules. I do feel that yesterday evening there were great departures from the rules that should govern in the Senate, that is, that quotations from *Hansard* of the House of Commons of the current session are strictly taboo, as far as being quoted in the Senate is concerned. But if the senator wants to ask the witness a question of this kind, as to what their plans are for the future, I would think that the question is within the scope of our inquiry.

Senator Smith: Mr. Mullally knows the question that is on my mind. If he would rather not answer the question, because he thinks it relates too closely to policy, it is his privilege not to answer, but I think, Mr. Chairman, you should give him a chance to answer my question if he wants to. If he does not want to, well,—

The Chairman: If you will give me a chance to tell you what I think the question should be, I would suggest that it is perfectly proper to ask him what plans, if any, they have for the future development of this operation. Now, I am not ruling that the witness should not answer.

Senator Smith: That is a good lawyer's question. I will take that.

The Chairman: Are we on common ground?

Senator Smith: We always have been.

Mr. Mullally: Mr. Chairman, the Minister of Fisheries did indicate that he had planned to introduce a further amendment to the Fisheries Development Act by way of an amendment to Bill C-4. As the Fisheries Development Act now stands the government can make financial assistance available towards the cost of constructing new fishing vessels, but there is a feeling in the industry that it would be very helpful if some change could be made so that some of this assistance could be made available to convert or modify existing vessels. We have many good vessels which, with some modification or change, could be used in new fisheries. So the minister had decided to introduce a further amendment to Bill C-4 to provide that financial assistance could be made available for the modification and conversion of fishing vessels. He could not, of course, move that in the committee. It was his plan to put it on the Order Paper for consideration at report stage. He did submit the amendment to the Clerk, but somewhere in the arrangements, through some misplacement—

Senator Molson: Or some slip.

Mr. Mullally: —or some slip, yes, the amendment did not get on the Order Paper. We were not aware of that until Friday, when the bill came up for report stage and third reading. It was simply a little slip-up somewhere in the process. The minister did submit the amendment, but it did not get on.

We have had discussions in the last day or two with the house leader in the other place about the possibility of

bringing in another small bill to incorporate that amendment which unfortunately we did not get on here. The minister would like to introduce another small bill.

Senator Smith: You have two years to do it, really.

Senator Flynn: Don't you think the words of the amendment are wide enough to cover this particular case?

Mr. Mullally: This amendment does not deal with vessel conversion.

Senator Flynn: If you put equipment in a vessel you are constructing equipment in a vessel, are you not?

Mr. Mullally: You mean ice-making equipment?

Senator Flynn: Ice-making, ice-storing or fish-chilling equipment.

Mr. Mullally: The modification and conversion of fishing vessels to which we are referring does not relate to their refrigeration or ice-carrying capacity. It could be a major modification, such as a new engine or lengthening the vessel or putting in a new deck structure.

Senator Flynn: Oh, I see. If you change the structure of the vessel, I agree with you, but if you were just to install in the vessel ice-chilling facilities, then that would be covered by the terms.

Mr. Mullally: It does not relate to that, but to a much broader program of vessel modification.

Senator Carter: I believe the witnesses indicated they had draft copies of the regulations. I wonder if we could have copies.

Mr. Mullally: Yes, we have copies with us.

The Chairman: Thank you. I will see that the Clerk distributes them.

Senator Carter: I also understood from Mr. Linton that it would be possible to obtain regional breakdowns from his departmental statistics. Could that information be made available in time to form part of this record?

The Chairman: I have already asked Mr. Linton to supply the committee with that information, and when it comes in we will distribute it and put it on file with the Committees Branch.

Senator Flynn: At any rate, it should present no difficulty so far as the area of Saskatchewan and Alberta is concerned!

The Chairman: Are you ready for the question now? Is there a motion that we report the bill without amendment?

Senator Smith: I move that we report the bill without amendment.

The Chairman: Those in favour? Contrary? Carried.

The committee adjourned.



FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

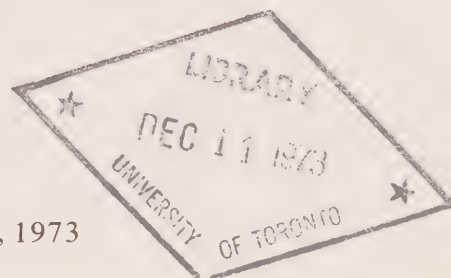
STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 20

THURSDAY, NOVEMBER 15, 1973



Complete Proceedings on Bill C-183, intituled:

“An Act to amend the Cooperative Credit Associations Act”

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly	*Martin
(Ottawa West)	McIlraith
Cook	Molson
Desruisseaux	Smith
*Flynn	Sullivan
Gélinas	Walker (20)
Haig	

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, November 14, 1973:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Denis, P.C., seconded by the Honourable Senator Fournier (*de Lanaudière*), for the second reading of the Bill C-183, intituled: "An Act to amend the Cooperative Credit Associations Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Langlois, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, November 15, 1973.
(22)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 10 a.m. to examine the following Bill:

Bill C-183 "An Act to amend the Cooperative Credit Associations Act"

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Buckwold, Burchill, Connolly (*Ottawa West*), Cook, Desruisseaux, Hays, McIlraith, Molson, Smith and Walker (13).

Present but not of the Committee: The Honourable Senators Argue, Denis and Grosart (3).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

WITNESSES:

Department of Insurance:

R. Humphrys,
Superintendent.

National Association of Canadian Credit Unions:

Robert G. Ingram,
General Manager; also Secretary of the
Canadian Cooperative Credit Societies.

After discussion and upon motion it was Resolved to report the said Bill without amendment.

At 10.40 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

Report of the Committee

Thursday, November 15, 1973.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-183, intituled: "An Act to amend the Cooperative Credit Associations Act", has in obedience to the order of reference of November 14, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,
Chairman.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Thursday, November 15, 1973

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-183, to amend the Cooperative Credit Associations Act, met this day at 10 a.m.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we not only have a quorum this morning, but there are some additional senators attending the meeting. We will first consider Bill C-183. Mr. Humphrys is here. He has with him Mr. Page, who is the Director of the Trust and Loan Division, which includes the administration of the subject matter of this bill.

Senator Argue: Don't you have anybody here from the credit unions themselves?

The Chairman: No. We have had no notice of anyone wishing to attend.

Mr. R. Humphrys, Superintendent, Department of Insurance: I see Mr. Ingram is sitting at the side of the room. He is manager of the National Association of Credit Unions, and is thoroughly familiar with the subject matter of this bill. I think he can give the views of the credit unions, if honourable senators wish to have them directly.

The Chairman: Our usual practice with Mr. Humphrys is just to call on him to explain the bill, and then he goes full steam ahead. You have the field, Mr. Humphrys.

Mr. Humphrys: Mr. Chairman and honourable senators, before I summarize the bill itself I would like to say a few words about the act that is being amended. The Cooperative Credit Associations Act was passed in 1953, at the request of the cooperative and credit union movements. Its purpose was really to provide a link between the credit union movements in the several provinces, and to give a kind of federal status to some of the provincial central credit unions who wished to avail themselves of this federal legislation.

The act itself provided for the incorporation of cooperative credit associations at the federal level. It contained the usual corporate clauses for such an association, such as annual meetings, board of directors and all the required legislation for internal government. It specified the corporate powers of such a credit association, and it provided certain financial standards and a machinery of supervision.

After that act was passed there was one cooperative credit association incorporated by federal law; that is the Canadian Cooperative Credit Society. There has been

only one incorporated federally. Four of the provincial central credit unions—those for British Columbia, Manitoba, Saskatchewan and Ontario—became members of the Canadian Cooperative Credit Association, and were then given, pursuant to the law, the status of federally incorporated organizations, and were endowed under the federal law with certain powers that are in the general banking area—the powers to accept deposits and make loans to members.

A number of other interprovincial cooperatives became members of the Canadian Cooperative Credit Society. The Canadian Cooperative Credit Society did not really develop very rapidly in a financial way. Through the years of the 1950s and 1960s the provincial centrals found the need to have their funds in their own areas and thus did not have much in the way of excess funds to deposit in the federal organization. Thus it remained as a link between the various centrals and became the spokesmen generally at the federal level for the credit union movement. There was one amendment in the late 1960s which somewhat broadened its power and increased its activities moderately.

This amendment has four main functions. Under the first one, it broadens very considerably the eligible membership in the federal body, in the Canadian Cooperative Credit Society. Secondly, it broadens the investment powers of that body and also the investment powers of those provincial centrals that become members of it. Thirdly, it would also give a widening of other corporate powers, that is, powers to provide advice, counsel, services to members of the cooperative movement. The fourth main function would be to provide a facility for emergency liquidity, should that be needed by the central credit unions.

I can discuss that in greater detail later, if the members of the committee have any questions; but I would mention that this lender-of-last-resort facility would be provided for the central credit unions but not for the locals.

There is nothing in this legislation or in the federal legislation generally that bears directly on the local credit unions; that is, the credit unions that have individual persons for their members and accept deposits and make loans to individuals. The federal legislation is really at the third level and also sweeps in some of the second level credit unions, but it does not come down to the local credit unions.

The local credit unions are incorporated under provincial law and are supervised under the laws of the several provinces.

Mr. Chairman, that is a thumbnail sketch of the present legislation and the purpose of this bill.

The Chairman: What has been the effect of the corporation as a federal body; and to what extent have those whom you call the centrals become depositors of that federal body?

Mr. Humphrys: Mr. Chairman, I think the effect of federal legislation in this area, which includes the formation of the Canadian Cooperative Credit Society, and federal legislation applicable to certain provincial centrals who have made themselves subject to it, has had the result of federal examination of these organizations and of the application of a rather higher standard of financial strength than was formerly the case. Generally, it has had the effect, I think, of improving the financial strength of the central credit unions directly subject to this legislation; and, less directly but no less definitely, the financial strength and the management skill of the central credit unions in other regions of Canada; and thus, through their influence, down to local credit unions.

Financially, the activity of the Canadian Cooperative Credit Society has not been very great. The amounts of deposits placed with it by its members have not been very large and its money activity has not been very large. This is partly by reason of the demands in the local areas for the funds generated by the credit union movement within the area; and partly due to the fact that the Canadian Cooperative Credit Society has only relatively few members and the legislation limited the proportion of its assets that could be lent to any one member, so that its capacity to make loans of significant amounts to individual members was rather restricted, until some recent years.

Senator Beaubien: Mr. Humphrys, are you happy with this bill, or have you any reservations?

Mr. Humphrys: I think the bill is quite appropriate and satisfactory in every respect, from our point of view.

Senator Connolly (Ottawa West): Mr. Humphrys, I take it that the members of the Canadian Cooperative Credit Society are credit unions themselves, or provincial unions, and not just individual people. Is that so?

Mr. Humphrys: That is correct, Senator Connolly. The present members of the Canadian Cooperative Credit Society are the provincial centrals for British Columbia, Manitoba and Saskatchewan. One of the provincial centrals for Ontario was a member until recently but there is now a merger going on between two organizations in Ontario, and the amalgamated institution will become a member. The other members are a number of interprovincial cooperative associations—the Cooperative Fire and Casualty Association, the Canadian Cooperative Implements Limited, the Cooperative Trust Company of Canada; and several more. But there are no individuals as shareholders.

This may raise a question, because in the original legislation, amongst the eligible members the act stated that there could be 15 natural persons. The only purpose for that was a technical point. When the Canadian Cooperative Credit Society was being formed in order to establish the corporation initially there had to be some members of the corporation; so several individuals were incorporated as the corporation. Later, those cooperative organizations

became the shareholders, and individuals have not since been shareholders in the Canadian Society.

Senator Molson: They are still eligible, are they not, under this clause 3—not more than 15?

Mr. Humphrys: They are still eligible, yes; but there would be no point in having them.

Senator Molson: No need?

Mr. Humphrys: No need, and no point.

Senator Connolly (Ottawa West): You need a board of directors or you could not elect a corporate body, or what you call a corporate body. You have to have individual members in order to establish a board of directors, in any event, even though the number is restricted.

Mr. Humphrys: Yes, and the provisional directors of the Canadian Cooperative Credit Society, when it was set up, were drawn from named individuals who were actually incorporated.

Senator Connolly (Ottawa West): Exactly. You mentioned in the course of the discussion that a facility for a lender of last resort is going to be afforded to the Canadian Cooperative Credit Society. I wonder if you would mind expanding that a little more, in the present context.

Mr. Humphrys: The background is that all of the deposit-taking institutions that are under federal legislation, except the central credit unions, now have some facility in place, whereby emergency liquidity can be provided if it is needed. For the most part, this is through the Canadian Deposit Insurance Corporation. The Canadian Deposit Insurance Corporation has for its members, by law, all of the loan and trust companies incorporated federally—they must be members of that corporation. Any provincially incorporated loan and trust companies that are accepting deposits may become members.

The present situation is that all of the provincial loan and trust companies, other than Quebec incorporated companies, are members of the federal Deposit Insurance Corporation. In Quebec there has been established the Quebec Deposit Insurance Board, which performs the same function for Quebec incorporated institutions. I should say that Quebec institutions that do business outside Quebec have their non-Quebec deposits insured with the Canadian Deposit Insurance Corporation.

One of the powers of that corporation is the power to lend to its members. If a liquidity crisis arose in one of its members that threatened the capacity of the member to meet its obligations, then the Canada Deposit Insurance Corporation would have the power to provide emergency liquidity.

The banks, of course, can turn to the Bank of Canada as well as to the Canada Deposit Insurance Corporation. There has been a similar facility established for sales finance companies that are under Canadian control. That was put in, in the Investment Companies Act which was adopted a few years ago.

This proposal is to establish a facility much along the lines of that in the Investment Companies Act. The Canada Deposit Insurance Corporation would operate as the agent to administer this facility; but, if it needed funds, it would seek the funds from the federal treasury and

would make loans which are specified here as short-term loans, adequately secured, to central credit unions that are subject to this legislation. The capacity would exist also to make loans to provincially incorporated bodies that have been formed for providing deposit or shore insurance or emergency aid to local credit unions. The emergency facility here would not deal directly with the local credit unions; it would provide the facility for the provincial centrals or for stabilization funds or insurance plans adopted by a province for its local credit unions.

The Chairman: But yet, Mr. Humphrys, the locals, in that indirect way, have some under-writing of their financial position.

Mr. Humphrys: Yes, Mr. Chairman. This is an important point, because the structure of the credit union movement is such that the local credit unions use deposits with the provincial central as their liquidity reserve. It is very important then that the central, which plays this key role in the liquidity picture of the whole credit union movement, be sure of its liquidity position. Thus the providing of emergency liquidity for the central union has the effect of strengthening the liquidity position of the whole movement.

Senator Argue: Up to this point—from here, back—has this money of last resort, this liquidity facility, been used? In other words, could you tell us how a central credit union in the past, that may have been in a position where it needed emergency funds, had been able to get them?

Mr. Humphrys: Well, Senator Argue, they would have to turn first to their banks. Most of the provincial centrals have a line of credit with one or more of the chartered banks, which would be their first line of defence. If they had to go elsewhere, they would probably seek the possibility of getting loans from other cooperatives, and perhaps from provincial centrals in other provinces; although this is rather difficult because it is not easy to pass the money from one credit union organization to another.

Senator Argue: From one central to another, under the legislation we have had so far, or just their own private arrangements?

Mr. Humphrys: It can, in some cases, be done through private arrangements, but they are rather specialized, and it would be easier to do it through this legislation; although the Canadian Cooperative Credit Society has not, hitherto, had the resources to play a very significant role in that regard.

Senator Argue: I just wondered, if any emergencies have arisen in the past, whether facilities that are already in effect have been used.

Mr. Humphrys: There have, from time to time, been needs for special liquidity on the part of central credit societies. They have been able to meet them, so far, through their bank lines and through such assistance as they could get from other cooperative organizations; but enough experience has been gathered to show pretty clearly that it would be desirable to have an organized facility in place, because one could not always be sure that the bank lines would be there indefinitely, and there could be situations arise where liquidity pressure comes onto quite a large proportion of the credit union movement at once. This would make it hard for one area to call on another.

Senator Denis: Have you any idea how many local unions there are in Canada?

Mr. Humphrys: There are close to five thousand.

Senator Molson: There is no access to the Bank of Canada, even indirectly, as this stands?

Mr. Humphrys: No, Senator Molson, there is not.

Senator Molson: Could I ask, Mr. Chairman, what the International Cooperative Bank Company Limited, and I. C. U. Services Incorporated, are? They are mentioned at the bottom of page 7 of the bill we have before us.

Mr. Humphrys: The International Cooperative Bank Company Limited is a bank incorporated in Switzerland, having for its main purpose the linking together of the cooperative movement throughout the world. Most of its shareholders are banks, or central cooperative societies, in many different countries. It is a substantial bank. Its assets now are in the order of \$230 million Canadian, and 800 million Swiss francs. It accepts deposits from the central organizations and makes loans to them.

Senator Cook: Is it a Canadian bank—a Canadian company—or an English one?

Mr. Humphrys: It is a Swiss bank. Under this bill that bank could become a member of the Canadian Cooperative Credit Society, and as a member it would have to buy shares, and could make deposits in the Canadian organization. The Canadian organization could make deposits in the International Cooperative Bank, and make loans to it, but only with the concurrence of the Superintendent. We thought it desirable to put some control provision in there so that we would at least have knowledge of, and have some control over, the extent of the funds deposited by the Canadian organization in the International Cooperative Bank.

Senator Connolly (Ottawa West): If you give them the power to make the loans to the foreign bank, have you regulations which require reporting before they do so, or require applications before they do so?

Mr. Humphrys: They can only make such loans with our approval.

Senator Connolly (Ottawa West): That is in the bill?

Mr. Humphrys: No, it is in the act.

Senator Buckwold: How are the liquidity positions of credit unions controlled? By provincial regulation? By local by-law? Or are there regulations that say that a credit union must be in a liquid position involving certain percentages of their assets?

Mr. Humphrys: Well, each province has regulatory legislation dealing with the formation of credit unions, the inspection and supervision of credit unions, and the rules and regulations under which they must operate. Most provinces require that the by-laws of the credit union receive approval of the supervisory authorities before they become effective. Those rules and regulations establish the borrowing and lending power and the liquidity requirements of the credit unions. The provincial centrals are under the same type of provincial legislation, and if they become subject to this federal legislation, there are liquidity standards imposed under this legislation.

Senator Buckwold: In your opinion, are these liquidity standards satisfactory?

Mr. Humphrys: With the amendments being proposed here, I think they are. I must say they are minimal, but I think they have served the needs of the movement, and in the 20 years or so that we have been connected with it, we have felt that generally they have operated satisfactorily; but I feel it desirable, myself, to have the emergency facility in place, to meet unexpected situations that may arise from time to time.

Senator Walker: May I ask Mr. Humphrys, Mr. Chairman, the following question with regard to page 7, clause 8 (ii) (g)?

Why would the International Cooperative Bank Company Limited, and the I.C.U. Services Incorporated be exclusively in this legislation? Everybody else is excluded, I presume.

Mr. Humphrys: No, sir, they are not. They are mentioned particularly because they are rather unusual; but the general provision is set out at the top of that same page, where it is made clear that this deals with the power to lend money to a member. Starting at the foot of page 6, it is spelled out an association can lend money to any cooperative credit society that is deemed to be federally incorporated, that is at the top of page 7, to any interprovincial cooperative—which is the same as the present rule—and then it says:

- (iii) with the approval of the Superintendent, to
- (A) the International Cooperative Bank Company Limited,
- (B) I.C.U. Services Incorporated, and
- (C) any other member of the association—

That phrase, “any other member of the association”, could include any cooperative organization.

The reference at the foot of the page is to the making of deposits. Paragraph (f) says that the association has power:

to deposit money in any chartered bank in Canada, with any association of which it is a member or with any institution authorized by or under an Act of Parliament or of the legislature of a province to accept deposits;

That is its general power to place deposits with other organizations. These other two, the International Cooperative Bank, and I.C.U. Services become, then, the only foreign organizations with which they could make deposits, and that is put under supervisory control.

Senator Walker: That is the point of my question. Why should they be singled out as the only two foreign bodies?

Mr. Humphrys: Well, I think there is no need really for a Canadian Credit Association to make deposits in foreign banks or foreign credit unions generally. The International Co-Operative Bank is formed specifically for the purpose of linking together the co-operative movement in various countries and possibly for providing deposits and loans across national boundaries.

To come back to a question asked by Senator Molson, the I.C.U. Services Incorporated is an organization formed in the United States principally to provide a series of

services for the credit union movement in that country; and, if this amendment is accepted, it would also serve the credit union movement, to some extent, in Canada. At the moment it is not a deposit-taking institution, being more in the nature of a service organization, but it may have some powers in the future to accept deposits for certain purposes, and if that turned out to be the case, then the Canadian association could make deposits with it, again under supervisory approval.

Senator Molson: Under what legislation would I.C.U. Services be incorporated?

Mr. Humphrys: It is owned by the Credit Union National Association, but I am not sure whether it is federally incorporated in the United States or state incorporated.

Mr. Ingram informs me that it is federally incorporated.

Senator Argue: My question, Mr. Chairman, might be more properly directed to Mr. Ingram.

I should just like to have a picture painted for the committee of the general use that may be made of this legislation, to what extent it would help the credit union expand, what is the state of the credit union movement today, and particularly I would be interested in knowing how this legislation may be used in the province of Ontario.

The Chairman: Well, Senator Argue, Mr. Humphrys has told us in part that it extends the emergency liquidity provisions, which is very important in itself. Even if it did nothing else, that would still be worthwhile.

Senator Argue: I still wonder, Mr. Chairman, if Mr. Ingram would care to paint a picture for the committee as to the extent that this legislation may help the credit union movement in the future. I have heard that it is necessary, and I am happy to be told how it will protect the credit union movement, but I want to know if it will mean a big expansion for the credit union movement, or if it will provide a moderate amount of help, or just exactly what they are going to do with it.

The Chairman: I am sure Mr. Humphrys would not object if we asked Mr. Ingram to tell us that now.

Mr. Humphrys: Not at all.

Mr. Robert J. Ingram, General Manager, National Association of Canadian Credit Unions and General Secretary to the Canadian Cooperative Credit Society Limited: Mr. Chairman and gentlemen, I am General Manager of the National Association of Canadian Credit Unions, and I am also General Secretary of the Canadian Cooperative Credit Society, the Canadian federal organization that Mr. Humphrys referred to and which is referred to specifically in this particular bill.

To answer Senator Argue's question, we have felt for a long time that the Canadian credit union movement and the cooperative movement needed a better system than it has had up to this point. As Mr. Humphrys has pointed out, the society over the years has not functioned in the manner in which we had originally foreseen it would. But with the development of the organization in Canada and its strengthening on a provincial basis, it has become very evident to us that there is a very real need to develop a system and improve that system on a province-to-province basis. We have not had a liquidity vehicle which has been adequate, in our opinion, and we have not had this lender-of-last-resort facility.

Furthermore, it was felt that there were too many restrictions in the legislation under which the central organizations operated up to this point. On the other hand, I think that the credit union movement in some cases was not sophisticated enough or mature enough to make use of the legislation as it existed. But now with the amendments in this particular bill, it will provide us with the numerous powers that Mr. Humphrys has briefly outlined earlier, and will enable us to develop a better system and to provide more services for more of our provincial centres and thereby for more of our local creditors.

Senator Argue: I come from Saskatchewan where you find a credit union in almost every town and every village, but in Ontario you do not find them. Perhaps they are hidden away for various reasons, but they are not on main streets competing with banks, whereas in Saskatchewan, as I have said, they are. I am wondering if the major effect of this legislation will be to be of real assistance to the credit union movement in the province of Ontario to expand, or whether it will simply be of modest assistance in the very slow expansion that has been going on for some time.

Mr. Ingram: My personal opinion is that it will help tremendously, and not only in the province of Ontario, senators. It is true that the Saskatchewan credit unions are more visible because of their location and origin in the various communities. But the Ontario legislation and the Ontario history has been industrially-oriented rather than

community-oriented in the past. This is now changing. On the whole, I think this will be a substantial boon to all the provinces.

Senator Argue: It is changing in Ontario so that they will be more visible, more competitive and more sophisticated.

Mr. Ingram: Yes, because the provincial legislation in Ontario has been eased somewhat, and the government now will permit the organization of community credit unions rather than simply having them tucked away in industrial plants across the province.

Senator Desruisseaux: Mr. Chairman, I wonder if there was any objection to this bill in any way by any one, and if there was, what were the points of objection?

Mr. Humphrys: I am not aware of any opposition, senator.

The Chairman: Any other questions?

Are you ready to deal with the bill?

Shall I report the bill without amendment?

Hon. Senators: Agreed.

Senator Walker: Mr. Chairman, may I take this opportunity to thank Mr. Humphrys for the wonderful clarity with which he always outlines these pieces of legislation?

Hon. Senators: Hear, hear.



FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

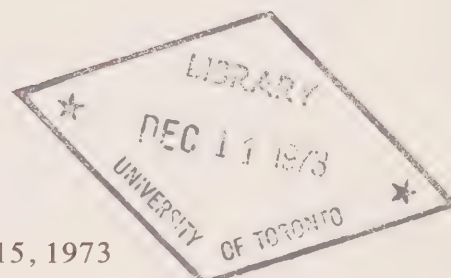
The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 21

THURSDAY, NOVEMBER 15, 1973

First Proceedings on Bill C-189, intituled;
“An Act to amend the Customs Act”

(Witnesses: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker—(20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, November 14, 1973:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator Laing, P.C., for the second reading of the Bill C-189, intituled: "An Act to amend the Customs Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Burchill, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, November 15, 1973.

(23)

Pursuant to notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 10.40 a.m. to examine the following Bill:

Bill C-189 "An Act to amend the Customs Act"

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Buckwold, Burchill, Connolly (*Ottawa West*), Cook, Desruisseaux, Hays, McIlraith, Molson, Smith and Walker. (13)

Present but not of the Committee: The Honourable Senators Argue, Denis and Grosart. (3)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

WITNESSES:

Department of National Revenue:

Mr. G. L. Bennett,
Deputy Minister,
Customs and Excise:

Mr. D. J. McIsaac,
Head, Marine and Rail Transportation.

Shipping Federation of Canada and Protecting and Indemnity Association:

Mr. J. Brisset, Q.C.,
Counsel;

Mr. W. T. Smith,
Director,
Shipowners' Assurance Management.

After discussion it was Agreed that Mr. Brisset be given an opportunity to submit his objections in writing to the Committee prior to Wednesday next.

The question of the Minister of National Revenue being invited to appear before the Committee in connection with the above Bill was taken under advisement.

At 12.15 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Thursday, November 15, 1973.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-189, to amend the Customs Act, met this day at 10.40 a.m.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us Mr. Bennett, who is the Deputy Minister, Customs and Excise. Sitting next to Mr. Bennett is Mr. McIsaac, head of Marine and Rail Transportation Section. We have back-up witnesses in case we need them.

I would suggest that in the first instance we might hear from Mr. Bennett as to the scope and purpose of the bill.

Mr. G. L. Bennett, Deputy Minister, Customs and Excise, Department of National Revenue: Honourable senators, if I might, I would like to speak briefly with respect to the principles of the proposed amendments in the bill and leave my able assistant, Mr. McIsaac, any of the detailed questions with respect to marine operations. He is an experienced man in the field as a collector of customs, in addition to being a headquarters officer now in charge of this section of our work.

Briefly, honourable senators, we are endeavouring by means of this bill to bring into parity the transportation system of shipping with rail, truck and air and, in fact, to provide authority in the law for responsibility which is recognized the world over for carriers to produce goods to the customs authorities prior to their being duly entered, as we say, and duty paid. There is a very substantial and strong link from transportation conveyor, to sufferance warehouse, to other forms of transportation throughout the country from the time any goods enter the country until they are cleared by the importer. All these movements are under bond, except this one point with respect to which we are attempting to close the gap.

Heretofore the only method by which this portion was guaranteed to customs was a physical check by a customs officer standing at each hatch of the ship, and you can imagine the scene. He would endeavour to keep count of goods coming off the ship and being unladen to wharfside or into sufferance warehouse and reconcile with the master the amount in the manifest, or inwards report as it is termed in law, with the goods actually landed and reported. The word "master", of course, can be interpreted as the shipping company's agent.

Due to the great increase in commerce and the amount of goods increasing with shipping, 10 years ago we really gave up what almost became a futile exercise in attempting to control by physical means this inward checking. We

decided to go to some more sophisticated means with respect to the control of goods and revenue owing the Crown. Other jurisdictions use various methods. In the United States they have a bonding system. In Great Britain it is a combination of a checking system, with the responsibility laid at the doorstep of the importer, who must pay the shot and argue later with respect to any losses which might occur in the goods that were supposed to be laden on the ship and did not arrive. We should endeavour to say, as we do to other carriers, that when they report inwards truly and in accordance with the law, which is very specific, the goods which have been laden on board, when these goods are cleared from the sufferance warehouse or the dockside into the sufferance warehouse or to a bonded carrier, if there is a shortage the responsibility for that rests with the shipping company, as is provided in the law. This responsibility rests with the master except for very wide exceptions. This is where it is not perhaps as firm as might appear on the surface.

Section 11(4)(a) to (g) provide a number of criteria spelled out quite clearly. If the customs authorities can be satisfied that this was not the responsibility of the ship-owners, it is provided that no levy will be made upon them. If, indeed, such satisfaction cannot be provided under all these criteria, they must pay the duty representative of the goods that were short-landed. To assist in that respect clause 6 provides for regulations for bonding and security which will make it somewhat easier for the shipping companies to operate in this manner.

I believe this is really the principle of the amendment. In all forms of customs operations, until goods have passed the international border, which is in this case the customs waters, until they are duty-paid, someone is responsible to the Crown for the duty owing. If the importer receives all his goods, he pays duty.

The Chairman: Mr. Bennett, what you are telling us has its origin in the report of the master?

Mr. Bennett: That is right, senator.

The Chairman: I take it there are other sections in the Customs Act which deal with whether the master has made a true report, a detailed report, or a false report, with which we are not concerned in this bill?

Mr. Bennett: That is right, sir.

The Chairman: Yes. We only take it from the point of a report, and these are relieving sections in certain circumstances under which the master might otherwise have to account for duty on all goods contained in his report?

Mr. Bennett: That is right, senator; and it is further, in some sections of the act, stronger than that. If the goods are not there, there is even the possibility of seizure of the vessel and similar procedures. It is that strong.

Senator Desruisseaux: Is provision somehow made in the same manner with respect to air cargo?

Mr. Bennett: Senator, air cargo is carried by bonded carriers, to use our terminology, and any bonded carrier landing at an airport with goods which have not yet cleared customs is responsible in the same manner. They must file a report inwards or, in our terminology, an air manifest. These manifests detail the cargo on board the aircraft, to whom they are consigned, the port to which they are being directed, and they will be ultimately cleared there. Any shortages, again, would fall upon their shoulders, to clear up with us whether they had indeed not been laden on board and there was a mistake in the manifest or they had been lost somehow. If, of course, they are damaged, and so on, there are allowances made for that.

Senator Desruisseaux: It is the same with freight.

Senator Grosart: I think the witnesses are aware that I raised a question of principle, which is rather different from that described by the witness. What, in his view, is the principle of the bill? I fully agree with the necessity of collecting whatever revenues are due to the Crown. I am aware of the problems that may arise. The question to which I have not yet had a satisfactory answer is why theft, between the entry of the goods into our territorial waters and entry into a customs warehouse or delivery to a bonded carrier, is not an exception. There are exceptions involving less responsibility on the custodian of the goods. If they are lost at sea, he is not responsible. If, by some mistake, they are not laden on board, he is not responsible. If they are destroyed after landing, he is not responsible, and so on. But if they are stolen from him—something over which he may have no control—under this amendment, as I understand it, the master is responsible. The man from whom goods have been stolen is now made responsible for paying a penalty, namely a duty, because somebody else stole the goods.

This seems to me to be an intolerable invasion of personal rights. We are in an area where we are trying to stop this kind of thing, when we are trying to stand up for personal rights. I recognize the fact that a shipping company is a person, just as much as is the master himself.

I should like an explanation. I am sure you will say that it is very difficult. I have been aboard ships and have seen the customs inspection. I know the problem. I have seen customs inspectors probing for opium in Shanghai. I know all the problems in this respect. But, in my opinion, it does not justify this invasion of a personal right not to be held responsible when some third party steals your goods. If there is a responsibility here, surely it is on the Canadian authorities to provide security against theft in this area between the shoreline and the bonded warehouse?

I would be interested to know if it is a problem of smuggling, whether you are really suggesting here that perhaps some of these masters may be reporting goods as stolen when you suspect they are being smuggled. I am looking for a good rationale to what, to me, is an intolerable situation. I do not think any of us would stand, for

one moment, for a law that said, "You personally are responsible if your goods are stolen from you. If there is some kind of penalty, duty, or sales tax, you will have to pay it". That would be the reverse of the general concept of our common law, as I understand it.

The Chairman: The thing that bothers me on the point you have raised, Senator, is that we start with the report of the master, which tells us what goods should be there, but in the movement of those goods through customs, to a sufferance warehouse or otherwise, the first question in my mind is who is in control, or who has the custody of those goods? If the master still has custody of those goods, in my view he is the one to look to. If, for any reason at all, they are taken out of his possession, he may have a claim and may be able to go to the police and lay a complaint, but the goods are in Canada and there is duty owing. In substitution for the report of the master, what basis are you going to use?

Senator Grosart: Mr. Chairman, I realize the difficulty. "What basis?" is a very good question. I am saying that this invasion, subversion, of a basic principle of law is not the proper basis. Perhaps we will have to lose some money. I would sooner see Canada lose this money than embark on a major step in the invasion of the right of a person not to be held responsible, when somebody else, such as the police, should have the responsibility for ensuring that theft does not become wholesale, as we understand it has.

It seems to me that perhaps the authorities are deliberately running away from their own responsibility. I know all the arguments—that it is done elsewhere, that it is done with other carriers—but they do not convince me one bit. I am not convinced that it is a good principle.

Necessity, as you would be the first to say, being a great student of the law, is never justification for a bad law.

Senator Cook: On that point, what cases are visualized under subsection (4)(c), where the goods are under the control of the master and are "destroyed after landing but before being formally entered"?

Mr. Bennett: You could envisage a sling, for instance, crashing down on a dockside and goods being destroyed. The goods would not formally have left the custody of the ship or have entered a customs warehouse, but they are truly destroyed, and evidence could be produced to prove this fact. Witnesses could be produced and a customs officer would be called immediately as a witness. This is one instance where, off the top of my head, I could say that goods were destroyed after landing but before being entered into customs.

Senator Connolly: Also goods destroyed by fire.

Mr. D. J. McIsaac, Head, Marine and Rail Transportation Section, Headquarters Operations, Customs and Excise, Department of National Revenue: Or goods being dropped overboard.

Senator Cook: It does not cover theft.

Mr. Bennett: Mr. Chairman, if I might say something in reply to Senator Grosart on this problem, I recognize the senator's arguments and I believe he understands our problem. We have a routine administrative problem. If a great deal of goods were missing continually from dock-

sides and shipping companies before they entered sufferance warehouses, in a large port—such as Montreal, with 21 miles of docks, and Halifax, a smaller port but with many miles of docks—we would require armies of men, police, to control and patrol this.

I was in Great Britain in September and discussed with the Chairman of the British Customs a similar problem which the British people have. There is just no way, short of introducing some sort of control and placing responsibility upon people, that customs, with limited facilities, can control all of the cargo that comes into countries like Canada these days. That is why, senator, subsection (4)(a) to (4)(g) cover most of it. If goods are stolen, I certainly agree that if you know who stole them, if you have any idea who the culprits are, then the ship owner, the warehousekeeper or ourselves would be able to get the police after them. But so many of these goods in the past have just evaporated, as it were, into thin air. You may have a suspicion; you may have some ideas; but you do not have any proof and, consequently, there is not very much that can be done about it.

On your principle, sir, there are principles in custom law similar to this with respect to a smuggled or stolen automobile. Somebody in the United States steals an automobile and brings it into Canada, where he sells it to a used car lot and somebody, quite unwittingly, purchases that car. The purchaser, of course, is innocent, and yet two months later the police, through their investigations, find that it is a stolen or smuggled automobile. The purchaser, unfortunately, is the victim of having purchased the car, and the car is seized. If the car was stolen in the United States it must, by treaty, be returned. If you went to a used car lot here and purchased an automobile that was stolen in Canada, you would be the victim of this type of thing.

Senator Grosart: May I interrupt just to say this? This does not seem to me to be relevant to what I am talking about, which is the rights of the person from whom it was stolen.

The Chairman: You mean the master.

Senator Grosart: The master or, in this case, the automobile owner. Mr. Bennett is talking about someone who subsequently buys it. That is another case altogether.

The Chairman: Let us confine it to the master. The bill deals with the matter starting at the stage of the report of the master, and makes certain provisions in relation to it. Let us keep the discussion on that basis in reference to the point you have raised.

Senator Grosart: Perhaps you should direct that remark to Mr. Bennett.

Senator Cook: Perhaps I might interrupt for a moment. If the goods are stolen, some innocent person has to suffer, whether it is the master, the warehouse owner, or whoever it is.

The Chairman: But if they are stolen from his custody, then he is responsible for the goods.

Senator Cook: I agree, Mr. Chairman, but the point is that some innocent person is going to suffer, whether it is the master, the warehousekeeper, or whoever, and the only recourse for that individual is to get himself insured.

The customs must have someone to put their finger on. If you delete the master and say it is going to be the stevedore or the warehouse owner, that poor fellow is equally innocent if the goods are stolen. The only way you are going to cure it is by having no one responsible.

The Chairman: Certainly, the master is going to be more careful if it is his liability.

Senator Molson: Mr. Chairman, when goods are offloaded from the ship and go into a warehouse in Montreal, along our 21 miles of unguarded waterfront frontier, who is then responsible for those goods?

Mr. Bennett: Who would then be responsible for the goods?

Senator Molson: Yes, the goods in the warehouses on the docks.

Mr. Bennett: When they are discharged into the sufferance warehouse, they then become the responsibility of the sufferance warehousekeeper to whose premises they are discharged.

Senator Molson: Are the warehouses on the dock sufferance warehouses?

Mr. Bennett: Practically all of them are, yes.

Senator Molson: So that the master is no longer responsible when those goods are offloaded from his ship and put into the warehouse on the dock?

Mr. Bennett: That is right.

Senator Grosart: That is paragraph (e).

Mr. McIsaac: He would receive a receipt or some acknowledgement from the warehousekeeper to the effect that the warehousekeeper has accepted into his custody so many items.

Senator Molson: So, what we are talking about in regard to theft is from the time the sling comes over the side and lands on the dock and it is picked up in pallet form, or whatever, and shoved into the warehouse? That is the only period during which the master is responsible for those goods once they leave his ship?

Senator Cook: For the period before they are formally entered, yes.

Mr. Bennett: There used to be many instances, before containerization, where cartons were on the ship which were reported by the master but which turned out to be empty. This would be a case where the shipping company would still be responsible for those goods. Obviously, somebody had taken the goods.

Senator Molson: But took them while they were in the shipping company's direct custody. That can happen to anybody; that could happen to you or me, and we would, of course, be responsible. There is nothing odd about that.

I am talking about the theft problem from dockside. We all know how common it was a few years ago. I believe it is much better now. What I am interested in is the limited time during which the master still carries responsibility for goods stolen, once they have left his ship. If in fact he is carrying a very onerous responsibility because they are left lying loose at dockside, then that does seem terribly

unjust. However, if they are merely moved off and then become the responsibility of others, then it seems to me the master's responsibility is not a particularly onerous one.

I assume that in all cases these goods are insured. That has nothing to do with you or me, but I assume they are.

Mr. Bennett: Yes. Actually the discharge, in practically all cases, is right into the sufferance warehouse. Perhaps Mr. McIsaac can think of instances where that would not happen. I cannot think of any at the moment.

Senator Connolly: I have a supplementary to Senator Molson's question, Mr. Chairman.

The Chairman: All right.

Senator Connolly: I think perhaps this is a problem that I did not adequately deal with in the Senate. Following Senator Molson's example, once the goods are taken off the ship—and as Mr. Bennett said they are moved immediately into the sufferance warehouse—the onus then, under this amendment, as I understand it, still rests upon the master to make sure that they get into the sufferance warehouse. The master's protection is a receipt from the sufferance warehouse keeper for the goods which, presumably, also appear on his manifest. Once he discharges that duty, once the goods leave his custody and control, once he has discharged that onus, then he is clear.

Mr. Bennett: That is right.

The Chairman: Senator Hays.

Senator Hays: Actually, Senator Molson has covered my question, Mr. Chairman. I assume that all of this material would be insured for fire, theft and that type of thing. The largest percentage would be insured, would it not?

Mr. Bennett: I would think so. I would not like to answer that categorically, senator.

Senator Cook: It does not have to be.

The Chairman: May I just ask this: What is there in the act to prevent the master from delivering the goods right at dockside into the custody of customs?

Mr. Bennett: We do not have customs facilities at every dockside, Mr. Chairman. We do have customs officers. However, to examine the goods they would have to have warehouse space, customs-bonded warehouses for goods to be stored, customs-examining warehouses where goods could be examined, or a sufferance warehouse which is owned by a private entrepreneur where goods could be examined. We do not have customs property right at dockside. That is not the way the physical operation works.

A great many of the concerns we had some years ago have been overcome in recent years with the advent of containerization. All of you who have been at ports where there is containerization know that goods are brought in, for the most part, in containers. They are sealed and they are, for the most part, secure. They move directly by rail or by truck to inland sufferance warehouses, if that is where they are destined for, or some are even moved to the premises of the importer where they are unloaded. If there is something found to be missing at that point, we then have to go to work to find out what happened to it. If the container is sealed and the seal has not been broken,

presumably the goods were never laden in the container. However, if the seal has been broken there is, of course, a responsibility on someone along the way, and we have to look into that. Generally speaking, I think the pilfering, which probably was a major problem a few years ago, is diminishing.

McIsaac: Yes, very much so.

If I may, Mr. Chairman, I should like to point out another thing. There is provision in the act that a vessel importing goods into Canada, once it has entered our waters, may be caused to remain at anchor until everything on board is duty paid. That is an impossible situation. There is then provision made whereby the local collector may designate certain areas as sufferance areas, or a sufferance warehouse, into which goods may be placed prior to customs entry. This is the case here, where the vessel comes alongside and is permitted by the local collector to start moving the goods before the duty is paid. In order to protect the goods and the revenue thereon, the goods are moved from the ship to a sufferance warehouse, probably an area of the dockside that has been designated, and for which somebody, the operator, has posted a bond in which he guarantees that he will observe the customs and excise laws of the country, that the goods will be presented for entry at a certain time or at a certain place, and so on. From the time the master of the vessel obtains an acknowledgment from the sufferance warehouse operator that the operator has the goods in his possession, then he is free and clear.

The Chairman: Let me just clarify this. I take it you heard Mr. McIsaac explain that the sufferance warehouse may be an area designated by the customs as a sufferance warehouse. It does not necessarily have to be physically a customs warehouse, specifically built and protected for that purpose; it may be an area of the dockside.

Mr. McIsaac: Right.

Senator Connolly: It may not be a building at all.

The Chairman: That is right.

Senator Cook: For civil purposes, you can have a course of action against a vessel through the master. It is almost the same as saying, if the vessel is liable, then the master is liable.

Mr. Bennett: That is correct. It is really, as you know, the agent who does the work.

Senator Grosart: To what degree are reciprocal responsibilities laid on the master of the ship? Is this pretty well universal?

Mr. McIsaac: I think it is pretty well universal. A master entering his vessel is responsible for the goods he has on board. I think that goes way, way back into antiquity.

Senator Grosart: Are we tougher than the main nations with which we are competing?

Mr. McIsaac: No, I think we are pretty easy going. The United States demands a bond to be posted before the vessel enters the port, or just about the same time. In many cases shipping lines do have standing authority bonds in which they accept responsibility for the goods.

In England, for instance, it is different, because the importer is regarded as the man who started all this business, so it is up to him. I might mention that in many cases importers have suffered under this system, because they would start it all right, and they would pay for their goods but they would never them. They could then have recourse to their insurance companies. I suppose the insurance companies would in many cases cover the duty and so on, but generally the practice is that duty is not included, although there have been court decisions in this country that the duty is part of the laid-down cost of goods. In many cases the insurance does not cover that.

Senator Grosart: Is there another way used by some countries to place this same responsibility on the importer rather than on the master of the ship? Is that a true statement?

Mr. McIsaac: It is generally so in the United Kingdom.

Senator Grosart: What is the total that the department estimates to be involved in the closing of this loophole, the dollar total?

Mr. Bennett: It is very difficult to put a dollar total on what you might not have got your hands on at all, or do not even know is missing. The most recent estimates for Ontario and Quebec are that it is somewhere around \$100,000 per annum. We have not really tried to project this into the west coast ports or the east coast ports. In the main central area, this is what we estimate.

Senator Grosart: Would \$1 million be a fair guess of what might be involved?

Mr. Bennett: I think that is really on the generous and high side, to be honest with you.

Senator Grosart: Let me clarify this question of what I will call the vulnerability area, the area when the goods are out of the physical custody of the master or the shipping company. What kind of time span might be involved there? Could it be only a matter of hours or could it be days, when these goods are in between the ship and what I call the designated area?

Mr. McIsaac: Just unloading time.

Senator Grosart: In hours, what might that be, on the average?

Mr. McIsaac: In the old system, where it came up by a sling, it would be from the time the sling—

Senator Grosart: I mean, all the goods for which the master is responsible for duty.

Mr. McIsaac: At the present time it is a matter of hours. At one time it was a matter of days, with slower turn around and so on. Now it is a matter of hours, and the faster they make it the better it is.

Senator Grosart: Let me follow that up, if I may. What kind of surveillance of those goods would there be while they are in this vulnerable position, vulnerable to pilfering and theft?

Mr. Bennett: Customs surveillance in the Port of Montreal, as an example, is a roving thing. There are customs officers patrolling in automobiles. There are surveillance warehouses where we have men stationed. Generally

speaking, because of limitations of staff and the size of the area, we move people around to meet conditions where ships are unloading. There are also, of course, National Harbours Board police patrolling these areas. This is the type of security in most harbours. We do not have customs guards stationed on the gangplank of every ship. We do not have customs patrolmen pacing up and down when the ship is unloading. There may, of course, be customs officers working in the vicinity who have this under scrutiny. Generally speaking, I do not think customs officers have ever caught anybody grabbing goods and running. This is done far more surreptitiously than that. There is a general surveillance, and there is, of course, National Harbours Board police surveillance.

Senator Grosart: Then tell us how this pilfering takes place. How does it happen in this apparently short space of time, even though there is surveillance? How does it happen?

Mr. Bennett: I am sure I cannot give you any detailed explanation. Maybe Mr. McIsaac has some ideas. If we knew, I do not think it would have gone on so long. It is one of those things that happen, maybe with connivance; perhaps that is a good word.

Senator Cook: "Conspiracy."

Mr. McIsaac: I might say that some of it is miraculous: boxes can be ripped open, almost before your eyes, and goods extracted; suddenly there is an empty case appearing on the floor of the warehouse.

Senator Grosart: They are experts.

Senator Molson: You are not just talking about whiskey? I thought they dropped the case on the corner, to break one bottle, and the other 11 became available. Isn't that the theory?

Senator Desruisseaux: I should like to know the estimate for the amount of theft in the different ports in Canada? What is the amount involved?

The Chairman: Mr. Bennett gave us the estimate for Ontario and Quebec, about \$100,000 a year loss of duties.

Senator Desruisseaux: Which would be, of course, only part of the value?

The Chairman: That does not include the west coast or the east coast.

Senator Cook: There is none of that going on on the east coast!

The Chairman: Of course not. None.

Senator Molson: I think the situation in general has improved enormously in regard to these losses—is that not so—compared with ten or a few years ago? Has the situation not really turned around?

Mr. Bennett: Yes, since containerization, the situation has improved.

Senator Grosart: Can I ask about the shipping companies? I believe there is a representative here from the Protecting and Indemnity Association. Are they really satisfied that this is a closing of the loophole?

Mr. Bennett: I cannot speak for the gentlemen present, but we have been dealing with the secretary of the Chamber of Inland Shipping, and we have no complaints from that body through their secretary. I personally have had no representations made to me, nor has there been any to the office or to the minister, that I know of.

The Chairman: I see one of the gentlemen now. Would you identify yourself?

Mr. Jean Brisset, Q.C., Counsel, Shipping Federation of Canada, and Protecting and Indemnity Association: Mr. Chairman and honourable senators, my name is Jean Brisset. I am a lawyer from Montreal, acting as counsel for the Shipping Federation of Canada, and also on behalf of the Protecting and Indemnity Association. We insure the liabilities of ship owners, dockers, and so on. The members of the federation, as you probably know, include most of the ship owners, charterers, operators of vessels bringing import cargo into the port—on the eastern seaboard, the St. Lawrence River and the Great Lakes.

To answer the question, we consider the bill most iniquitous and we are very much opposed to it. If I may be permitted, at a later stage, I would like to explain our reasons for being opposed.

The Chairman: As you have opened on the subject, you may as well go ahead with your explanation now.

Mr. Brisset: First of all, I would like to thank honourable senators for the privilege of appearing before you. I am doing so at rather short notice and without prepared notes.

To the shipping industry, what appears to be the real objective of this bill is to permit recovery by the ministry of duty on goods which are stolen between the time they are landed from the ship and the time they are delivered to the importer or delivered to a bonded carrier like a railway, who will then take the goods to final destination.

Senator Buckwold: I am sorry to interject, but I did not quite get your interest in this. Do I understand it involves shipping from the port of embarkation, where the goods are laden in a foreign country, on the ship?

The Chairman: No.

Mr. Brisset: No. I am speaking of the period between the actual landing of the goods in a Canadian port and the time of the delivery of those goods to the importer or to a bonded carrier who will take them to final destination. Let us take as an illustration what happens in the Port of Montreal, with which I am more familiar. The ship will arrive there. The master, or his agent in most cases, will attend at the office of the customs and will say to the customs officer in a report, "I have such-and-such goods on board which I will land in Montreal." He produces his papers, the manifest, in particular, which details all the goods on board, including the marks and the description and so forth. Then he lands the goods from the ship. Nowadays, as you probably know, ships turn around very quickly, they have mechanical equipment and so forth.

The goods are then landed on the wharf or into a warehouse or a shed. Those sheds in Montreal are leased from the National Harbours Board by agents, stevedores and terminal operators. They are in most cases what we call sufferance warehouses. However, the operator of suffer-

ance warehouses never gives an acknowledgement to the ship of the goods that have been landed. The reason is quite simple. I believe the customs authorities agree it is now impracticable and not possible to have a tally from the ship as the goods are landed, as there used to be in earlier times when the customs officer could attend at every hatch to check what was coming out.

So the operators of the sufferance warehouse do not acknowledge the goods that are landed or stored in their warehouses. There may be three, five or ten days that would elapse between the moment the goods are landed and the moment they are actually delivered to the importer who will come with his truck, vehicle or railway car to pick them up.

The purpose of this bill, as we see it, is to make the master—and therefore the ship owner, ultimately—liable for pilferage which will occur during that period of time, between landing and actual delivery.

It is also—and perhaps this is of lesser importance—for the purpose of making the master, and therefore the carrier, liable for goods that are not actually landed at the port where the ship is, when the master is unable to furnish any of the explanations foreseen in the proposed new subsection (4) of section 11.

I will give you an example of how things are done, for instance, in the Port of Hamilton, near Toronto. In Hamilton the harbour commissioners have control of what we might call the sufferance warehouses and are themselves in charge of the security arrangements. The harbour commissioners take the stand that they are not responsible for goods that are eventually short delivered. They take the stand, if they are short delivered when the importer comes to get them, it is because they were not landed. They say, "Our security is tight enough; we cannot accept responsibility for short delivery".

In such a case, under the present bill, unless the master is able to invoke one of the paragraphs dealt with in the bill, he will be responsible for the duty on the goods short delivered, even though he has no custody of the goods himself.

In Montreal, I think it is proper to say, once the goods are landed he has no custody of the goods. In fact, his ship will have left, in a great many cases, before the goods are delivered to the importer who comes to pick them up.

There have been alternatives and these were mentioned by the sponsor of the bill in the other place, the honourable Minister of National Revenue. He said this:

All possible alternatives to the proposal before the House today have been exhaustively explored. We have concluded that there are only three other options open to customs. First, customs could simply accept without question the statements of the ships masters or agents.

I am not too clear as to what this means, but probably it would mean that the customs would accept a statement from the master that the goods were not landed, which I agree would not be entirely satisfactory.

The Chairman: Mr. Brisset, on that point, as I understand what you were saying, when a vessel arrives at the dock somebody—the agent of the owners, or the master, or somebody—goes to the customs officer and delivers a

report of the goods. That must mean a report of the goods that are physically aboard.

Mr. Brisset: That is correct. It is based on his papers, on the manifest.

The Chairman: That's right.

Mr. Brisset: Which is prepared at the loading port, showing what goods were put on board. If, at that time, goods that are supposed to be available for loading are missing, he would nominate—

The Chairman: No, let's stop right there. That report is given to the customs officer at the dock, representing the goods that are supposed to be in the vessel. Well then, in the course of unloading, somebody may make a tally which shows that there is a short landing. At that stage, in whose custody are those goods that are being landed from the ship to the dock?

Mr. Brisset: Those that are landed are in the custody of the operator of the sufferance warehouse. They are landed into his warehouse, or are in his custody, in the sense that they may be landed right on the wharf, but are then taken by mechanical means inside the warehouse. There are also open wharves, I must say, for certain commodities like steel rails, but these are not likely to be pilfered.

The Chairman: No, but I am not talking about areas that may be designated as sufferance warehouses, even though physically there may not be any structure there. I am not talking about those. I am talking about goods that are landed dockside—and let's forget for the moment about sufferance warehouses. At the moment of landing of those goods dockside, it is the master who has caused them to be unloaded, isn't it?

Mr. Brisset: Yes. Using the stevedores—

The Chairman: And if, under his direction, there is unloaded less in the way of goods than appears on his list—

Mr. Brisset: Yes.

The Chairman:—well then, surely the responsibility there should be the master's?

Mr. Brisset: Well, they are not landed in Canada if they are not there at that time. If they are missing, there might be numerous causes. For instance, ships, as you well know, on a particular trade—and I think, for instance of the South American trade—will call at a number of ports before they reach Canada. In these ports a cargo may be handled, and pilferage might take place there at those ports.

The Chairman: Yes, but, now, stop right there. We have started out in our cross-fire of discussion with the report that the master presents to the customs officials at the docks—say, in Montreal. Now then, are you suggesting that that report contains a greater listing of merchandise than what is physically on the ship at that time?

Mr. Brisset: No, senator, not at all. It indicates—in fact, it is based on what was loaded at the loading port.

Mr. Chairman: Well, I cannot agree with you on that, because the master is presenting it as being the merchandise that he has abroad for landing at, say, Montreal.

Mr. Brisset: That is correct.

The Chairman: Well, am I to assume, then, that he is to be excused for presenting what is an untrue statement?

Mr. Brisset: Well, unless something has happened on the way, it will be a true statement. He declares: "I have on board what was loaded at such a port." Now, in the majority of cases, these goods will be landed at the port of discharge; but where and when they disappear is here, at the port of discharge, during the period of time that elapses between the physical act of putting those goods over the side on to the wharf, and then into the sufferance warehouse, and the moment the goods are delivered to the importer, who comes to the warehouse to pick them up, some three, five or ten days later, this is where the goods disappear, and it is on these goods that, by this proposed legislation, the minister is seeking to recover the duty.

The Chairman: I understood the witnesses to have said that when the goods are delivered to a sufferance warehouse, whatever that may be—whether it is a structure, or an area—the responsibility then is that of customs.

Senator Connolly: More than that, Mr. Chairman. The master at that point gets a receipt from the sufferance warehouseman.

Mr. Brisset: He does not get a receipt.

Senator Connolly: There is a discrepancy, then, between the other evidence and what you say now.

Mr. Brisset: Not completely. The reason is that there is no tally made at the time of discharge, and therefore the sufferance warehouseman could not possibly give a receipt for the goods when the does not know what goods have been landed, and as they have not been tallied.

Senator Connolly: You say, then, that in fact they do not give a receipt?

Mr. Brisset: They do not give a receipt, because if they gave a receipt, then I agree with the representatives of the department. Section 278 of the act, subsection (4) reads as follows:

A person who operates a sufferance warehouse is responsible for the safekeeping of all goods stored therein pending the due entry or lawful removal of the goods, and is liable to Her Majesty for all duties payable on the importation of the goods unless he can show to the satisfaction of the collector that the goods have been duly entered or lawfully removed.

However, before he can become so liable, he has to have acknowledged, in some form, the receipt of these goods, which in practice, because of the exigencies of trade, he does not do. At the time of delivery to the importer, he only prepares or obtains, himself, a receipt from either the importer or the bonded carrier, the railway, for the goods that he himself has delivered; but he does not give a receipt to the master of the ship for the goods that were landed in his warehouse.

The Chairman: Mr. Brisset, between the time the goods are landed from the ship, on the dock, and the time they

are delivered to a sufferance warehouse, there is a period of time, is that right?

Mr. Brisset: Well, it is a period of time that can hardly be calculated. The goods are lifted from the ship's hold on a sling, for instance—

The Chairman: I understand.

Mr. Brisset: —and then they are brought down. It is a question, on the wharf, of a few seconds. It is not there that the pilferage occurs; the pilferage occurs when the goods are in the sufferance warehouse, or on the wharf.

The Chairman: Oh! I understood you to say that there was a variance, or a difference, due to pilferage, or theft, between the time the goods were landed and the time they got to the sufferance warehouse.

Mr. Brisset: No, no. There is no period of time; this is a continuous operation.

The Chairman: I know there is a short period of time, but you are not saying that the thefts or pilferage occur during that period?

Mr. Brisset: No, not during that short period.

The Chairman: All right.

Mr. Brisset: They occur in the warehouse.

The Chairman: That was the impression that I got from your evidence.

Senator Grosart: Mr. Chairman, perhaps I might ask a question for clarification. Do I take it, Mr. Brisset, that your point here is that the real problem is due to what you call the exigencies of the trade. These goods are physically delivered to the sufferance warehouse and there is no receipt for them, and in the meantime the ship may have turned around and may be on the high seas. So there is this interval when it is impossible, for reasons of the trade, for the master to have a receipt? He cannot get it because the sufferance warehouse is not in fact a warehouse; it is just a dock or wharf. So the sufferance warehouse at that time is not going to give him a receipt. Is this the real problem?

Mr. Brisset: That is the real problem.

Senator Grosart: May I ask another question? I hope Mr. Brisset will go on with this very interesting explanation. This point occurs to me immediately because I have asked departmental officials if there have been any protests from shipping companies, and I asked the same question of the sponsor of the bill. In both cases they said that, to the best of their knowledge, there had been no objection to what was proposed in these amendments. When did you first hear that this bill was going through, Mr. Brisset?

Mr. Brisset: The bill, I think, went through in early June, and I was first consulted in July. I was asked by the Shipping Federation for an opinion on what was sought to be achieved by the bill and what would be the consequences. Then the line of correspondence started. The insurers of the liabilities of the shipowners were then advised and, as you probably know, most of these insurers, what we call protection and indemnity clubs, are in London. Those who insure most of the ships on a mutual basis are what we call the London P.N.I. group. I have had

occasion to appear before you on their behalf on other occasions. Eventually—and perhaps we are all to blame for not having acted earlier—we had the response of those directly concerned to the effect that they thought the bill was most iniquitous.

Senator Grosart: Could I ask this question, Mr. Chairman?

The Chairman: Well, would you let him finish this one? He has not finished answering your question.

Senator Grosart: Well, I thought I might speed up the answer by asking this one. You used the word "iniquitous," Mr. Brisset, and I might add, if I may, Mr. Chairman, that I think I can understand why. I reached the same conclusion about the bill.

I think I should be entitled to say, because of the conflict of interest arguments that arise from time to time, that I have had no contact whatever with anybody concerned, and it is a complete surprise to me that there has been objection to the bill. I reached my conclusion merely from a reading of the bill and knowing nothing whatever about this business, and from the principle I stated here. But what interests me, Mr. Brisset, is the time that elapsed before you made a protest to the department or to the Minister, and also as to why you did not appear before the Commons committee. Did you know this bill was there for consideration?

Mr. Brisset: In the Commons it went into Committee of the Whole the same day.

Senator Grosart: It passed the Commons within an hour.

Mr. Brisset: I am sorry. I was in Europe at the time, and perhaps we are all a bit guilty for not having made representations earlier.

Senator Cook: I wonder, Mr. Chairman, if we could let the witness finish. It seems to me that there is a problem here. There is obviously money being lost to the customs, and there seems to be a question as to who is going to accept the onus for solving this problem. Is it going to be the customs, or the warehousekeeper, or is it going to be the shipping companies? I understood the witness to say that there were certain alternatives, and I should like to hear him say what those alternatives are, agreeing that there is a problem and agreeing that there is money being lost to the treasury through goods being stolen. So, who is going to accept the onus—the customs people, the ship owners, or the warehousekeepers?

The Chairman: This is not interrupting you, Senator Grosart.

Senator Grosart: Well, I am sorry, because I did interrupt the witness when he was giving us (a) of the alternatives.

Mr. Brisset: I do not think I had gone as far as to give alternatives.

Senator Grosart: No, I said, "(a) of the alternatives."

Mr. Brisset: One of the solutions to the problem would be better security in some of the ports where this state of affairs exists, namely pilferage between the time of landing and the time of delivery. I have to say that it is, unfortunately, in Montreal that the situation is at its worst, and it has not improved over the years as much as we

have been told. It is not quite so serious in the eastern Canadian ports, and as to the situation in Vancouver I am in no position to comment.

The alternative I see would be to have better security. Let me give you an example of this. We could have a system such as you find in some of the European ports, and I would mention Hamburg, for instance, which—to use an expression in the trade, but which might not be quite accurate—is a free port. It is a free port in the sense that the goods are landed at the sheds or on the wharf, but they are not considered to have entered the country until they go through the various checkpoints where customs officers are located along the harbour premises. This is when the goods are considered to be entering the country, and the security is such that, according to my information, there is little chance of pilferage. In fact, everybody is checked, even the customs people themselves, walking out of the gates and they may even be searched if necessary. This is one way of doing it.

The other way—and I do not know if you might feel that I am not speaking too seriously—is this: If the government is really seeking to replace the duty revenue lost on pilfered goods, and if the present facilities cannot be improved, then another solution would be to increase duty on goods in general and thereby spread the risk among the consumers. It will have the same effect in some respects if this legislation goes into effect.

Senator Cook: Might I interrupt you? The higher you put the duty, the more thefts there will be, because you are making the goods far more attractive to steal.

Mr. Brisset: I would not think that to cover \$100,000 a year the increase would be that important. What will happen in fact is this; that the cost of importing goods into Canada, under this proposed legislation, will increase in the sense that the insurers who eventually pay the duty will, of course, increase their premiums as far as the shipowner is concerned, and he in turn will increase his freight rates. This follows.

Another factor which is bound to increase costs is the fact that bonds will now have to be found to guarantee payment of duty. Ships come here quite often with cargoes worth considerable sums, sometimes of the order of two or three or four million dollars. The duty on such cargo would also amount to some hundreds of thousands of dollars, and to put up a bond for, say, half a million dollars would not be at all inexpensive, and this in turn would be reflected eventually in the cost of importing the goods into Canada.

Senator Molson: You are doing that elsewhere, such as in the United States?

Mr. Brisset: Yes.

Senator Molson: So there is nothing original about it.

Mr. Brisset: No, I agree with you.

Senator Molson: I would just like to ask you one question here, and I do not think I am interrupting your train of thought. Perhaps you would just explain this to me. When those goods are loaded, and a manifest is prepared and those papers are signed, then those goods are acknowledged to be on board, is that right?

Mr. Brisset: No, the manifest is prepared at the loading port.

Senator Molson: That is what I said. The captain, or at least his chief officer, loads that ship according to the weights, bulks and types of materials and so forth. Those goods are accepted and placed in that ship under the supervision of the master. Why is it possible for him to on-load and do this and not off-load and apply the same procedure? What is the great difference?

Mr. Brisset: It is not always correct to say that the goods are checked as they are loaded. The information in a great many cases is given by the shipper and this is particularly true in the case of containers “stuffed”, to use their expression, by the shippers.

Senator Molson: We have put the containers aside for the moment because they are not going out of the sufferance warehouse. We are dealing with broken cargo, not container cargo.

Mr. Brisset: All I can say is that not only the customs authorities but the ship operators have found it impractical to maintain tallies at the discharging port which would be so accurate that there would be a precise and quite definite count of the cargo unloaded. Ships, as you may know, cost today a considerable amount of money, \$5,000 per day. It is felt that this procedure would delay ships to an unacceptable point.

The Chairman: I am bothered by the fact that Mr. Brisset offers an explanation that there may be something wrong in the manifest. That is, it may record merchandise that is not actually loaded. I interpreted a statement you made a few moments ago to be a suggestion of that nature. You suggested that a master may not be responsible for the report that he gives because, even though he is supposed to check everything and he has his men doing it, there may be shortages in the loading. Is that your suggestion?

Mr. Brisset: This is possible.

The Chairman: Do you suggest that as some reason for saying that this bill is iniquitous because it starts with the report of the master?

Mr. Brisset: No, that is not my main point. It is that really the main objective of the bill is to make the master and the carrier responsible for what happens after the goods are landed in the port of discharge and before they are delivered to the importer.

Senator Burchill: Senator Molson put a question which I wished to ask, but I have a further question: Are the sufferance warehouses the property of or under the control of Customs and Excise?

Mr. Bennett: Sufferance warehouses are operated by private entrepreneurs or they may be National Harbours Board property, but they are granted the right of sufferance under bond and are areas designated for goods to be landed and moved from there farther inland by bonded carrier. They may even just be cleared from a sufferance warehouse and given into the hands of the importer after duty is paid. I believe this is the point.

Senator Grosart: Just to clear up Senator Molson's point, may I ask the witness, Mr. Chairman, if this situation in

which goods are not laden is not already one of the exceptions, so we are not really dealing with it?

Mr. Brisset: It is an exception if the master can prove that they were not laden. If he can prove that, there is no problem.

Senator Molson: This is really a supplementary question: I think the points made by Mr. Brisset are very valid and good. However, I am staggered that the owners, not the masters but the shipping companies, are prepared to offload cargoes into places under these unsatisfactory conditions, knowing that pilferage exists for which they are responsible. I do not know why we have not heard an enormous scream on this very subject. Why do you accept these sufferance warehouses if you risk losing your cargoes?

Mr. Brisset: The reason is that the carriers, the shipowners do not accept the responsibility for losses occurring after the goods have left the ship.

Senator Molson: But you do not know, because you have not received a receipt. You do not know what they have got.

Mr. Brisset: No, but it becomes apparent in a great many cases that they have been stolen from the shed. In those cases liability is not accepted for the theft because the contract terminates the liability off the ship's tackle.

Senator Molson: I am very sorry, but that is contradictory to your previous statement. If the liability ceases off the ship's tackle, why are there sufferance warehouse losses the problem of the shipowner?

Mr. Brisset: They are not whenever it can be established that the goods have in fact been stolen. There are a great many cases—and Mr. Smith, who handles this type of affair, could possibly answer better than I in which it is quite apparent that the goods have been stolen out of the shed. Cartons are discovered open and bottles taken out, which was obviously not done before the discharge, but in the shed.

Senator Cook: Mr. Chairman, from this very interesting and fascinating evidence it is obvious that unless someone is made liable by statute we will never get to the bottom of who is responsible for the missing goods. The master is traditionally the man and has been throughout the years, that is, the ship carrier. He takes control; and, in my opinion, if the master is not liable by statute we will have an absolute mare's nest.

Senator Connolly: Following Senator Cook's point, I believe Mr. Brisset is arguing that at a certain point the master should be capable of discharging in some effective manner his responsibility. I understood Mr. Bennett and Mr. McIsaac to say that the master is discharged from liability when the goods are placed in the sufferance warehouse and a receipt obtained. The receipt for the goods so discharged relieves the master from any further responsibility.

Perhaps I should ask Mr. Brisset: Do you say it is physically impossible for the sufferance warehouseman to give the master that receipt or discharge?

Mr. Brisset: In practice it is, because before the sufferance warehouse operator will give such a receipt he will

require to know what he has received from the ship, and, to ascertain that, there must be a tally during the course of the discharge. This cannot be done in practice because of the manner in which things are done; it would delay the ship too much.

The Chairman: I think we are overlooking a point. We have been told so far by the departmental officials that when a sufferance warehouse is established by an entrepreneur or some other independent body a bond must be given. That bond, I take it, is given to the customs. If it is established to the customs that there is a shortage, I am sure the customs would enforce that bond.

Mr. Brisset: Not in practice, Mr. Chairman. Customs has that power under the law but, having that power, why do they want to make the master liable? It is for the very reason that they do not pursue a sufferance warehouse operation.

The Chairman: Mr. Brisset, you are overlooking a very moot point, that there is machinery in existence under which, if the loss is established in a sufferance warehouse, the master who is being made responsible under this statute can recover any liability he incurs by establishing to the satisfaction of customs that they have the bond of the sufferance warehouseman. You are saying that it is physically impossible for the master to do that. But who has greater responsibility to do it, other than the master?

Mr. Brisset: The reason is quite simple, Mr. Chairman. He cannot establish the true position because he has no receipt from the warehouse operator.

The Chairman: Perhaps he needs to change his procedures.

Senator Connolly: It would certainly be incumbent upon him, under this legislation, to seek a receipt from the sufferance warehouseman. I am referring to the onus in law.

Mr. Brisset: He would have to weigh two alternatives. If he is to obtain a receipt from the sufferance warehouse operator, he would have to have a tally from the ship. That means delaying the ship considerably, amounting to so many dollars per hour. He must weigh that against his possible liability, which is, of course, covered by insurance. I am afraid that the carrier, the shipowner, would rather lean on his insurer, even if it means eventually increasing his freight to cover his extra cost, rather than proceed with the tally ex-ship. This is purely a commercial problem.

The Chairman: Mr. Brisset, you told me that the shortage, if any, occurs in the sufferance warehouse after the goods have gone in there.

Mr. Brisset: Yes.

Senator Denis: And sometimes before. He does not check the exact amount of goods when he loads them.

Mr. Brisset: He does, when he loads them.

The Chairman: Mr. Brisset, I was asking you whether the shortage occurred in the landing on the dock or in the period when the goods were in the sufferance warehouse. You told me it was in the period when the goods were in the sufferance warehouse. Is that what you meant?

Senator Grosart: In sufferance, rather than in the sufferance warehouse.

Mr. Brisset: It happens after the goods have been landed on the dock. Once they are landed on the dock, they may stay there for a few minutes or an hour and are then taken nominally into the warehouse itself. It is during the period that elapses from the moment they touch the wharf until they are delivered to the importer that the losses occur. It may very well happen, I assume, five minutes after the goods have been landed and before being taken into the warehouse.

The Chairman: But, Mr. Brisset, that is not what you told me when I asked you a question not five minutes ago on this point.

Mr. Brisset: I am sorry if I misunderstood your question.

The Chairman: No one, so far, has accused me of asking questions that they could not understand.

Mr. Brisset: I thought I had made it quite clear that the losses occurred between the moment of landing and the moment of delivery.

Senator Grosart: To whom?

Mr. Brisset: To the importer.

Senator Connolly: Not to the sufferance warehouse?

Mr. Brisset: No.

Senator Connolly: I think that is where part of the confusion lies. You have the ship alongside. You have the unloading on to the dock. You have the transfer to the sufferance warehouse. And Mr. Brisset says that in that period of time there is no practical possibility of pilferage.

Mr. Brisset: There is. It is a continuous operation.

Senator Connolly: As I understood it, your complaint was—and I cannot see this—that the pilferage took place when the goods were physically in the control and custody of the people in charge of the sufferance warehouse. That is where the big problem arises.

I now come back to my original question, that if the master is exonerated by delivery into the sufferance warehouse, the administration should perhaps be making sure that there is ample time for the sufferance warehouseman to give the master his receipt, which discharges him. If that happened, I take it you would be satisfied with the proposal in the bill?

The Chairman: Senator, it is not a case of the sufferance warehouse people not having ample time to prepare a receipt. It is just that the receipt they would give, if there is a shortage in the goods, would not be in line with the master's report.

Senator Connolly: Mr. Chairman, I think you are ahead of me. The master discharges what he thinks is on his manifest, and he delivers it to the sufferance warehouse. Mr. Bennett has said that the sufferance warehouse gives the master a receipt for the goods that he has discharged to him, and at that point the master's responsibility is finished under this legislation. Mr. Brisset says that such a receipt is not forthcoming. It seems to me that this is a matter of administration of the customs warehouseman

not doing what he should do to exonerate the master, or perhaps of the master not insisting upon getting his own discharge.

Senator Grosart: For clarification, may I again ask Mr. Brisset if his point is that the legal responsibility should coincide with the physical custody? Is that, in the main, your point?

Mr. Brisset: Yes.

Senator Grosart: Therefore, it is your suggestion that these would be better amendments to the bill if the minister sponsoring it would be realistic and say, "Here is where physical custody exists and where legal custody begins", to make the two coincide and to get the facts in line with the law, instead of taking what to me is the easy way out and saying, "We will put the liability on the master." We are dealing with areas under the National Harbours Board, with, in many cases, areas under federal jurisdiction.

I know that time is getting on, but may I ask the witness whether he would like more time, whether it would be in the interests of the bill if he had an opportunity of presenting a written presentation to the committee? Would it be in order if I asked him that question?

The Chairman: That is up to the committee to decide. Not being a member of the committee, you can be heard and you can make suggestions, but a member of the committee would have to propose an adjournment, or something of that kind.

Senator Grosart: I did not propose it. I asked you if I had your permission to ask the witness that question. It may be a point of order. May I ask the witness that question?

The Chairman: Certainly.

Senator Grosart: Mr. Brisset, you have heard the question. Would you give us your answer?

Mr. Brisset: I would be quite willing to prepare a written submission covering the point I have raised.

The Chairman: But there must be a time limit, having regard for the position of the committee and of Parliament. This committee is scheduled to meet again next Wednesday, although it could meet earlier. If you feel that you want more time to organize your thoughts, do you think in that time there are points that you might present to the committee that you have not touched on today?

Mr. Brisset: I would be quite prepared to meet that deadline, Mr. Chairman.

The Chairman: No, my question is: Do you think that there are points which, if you were preparing a written submission, you would put in that submission, points which you have not raised before the committee today?

Mr. Brisset: All I can say is that I would perhaps make a better submission than the one I made today just more or less off the cuff. I would more or less cover the same points.

Senator Cook: May I ask the witness one question? Was it at Hamburg where you said they had instituted a very good system of security?

Mr. Brisset: Yes.

Senator Cook: If this bill is passed there is nothing in it which would stop the institution of the same system of security in any Canadian port, is there?

Mr. Brisset: No, the customs people could do that.

Senator Cook: So this bill would not stop the installation, shall we say, or the institution of a proper system of security modelled on the Hamburg system which would reduce the amount of pilferaging from little to none?

Senator Grosart: It will not stop it, but it will not start it either.

Senator Cook: Let the witness answer.

Mr. Brisset: Well, we certainly need more security. The more we have, the better the situation will be.

The Chairman: I think we have covered the provisions of this amending bill. It is now a question of what the committee wishes to do.

Senator Buckwold: Mr. Chairman, I have just a couple of minor questions.

Senator Burchill: How would it be if we adjourned?

The Chairman: Well, Senator Buckwold has a question or two.

Senator Buckwold: The first comment I want to make, Mr. Chairman, is that in the long run it is the consumer who is going to pay the price. The ship owners are not going to lose nor are the insurance companies; it is the consumer who will eventually pay the price. So I think, obviously, we want to do whatever is best to minimize the additional burden placed on the eventual purchaser of the commodity involved.

The Chairman: Well, in this respect we will have to get to the ministerial level. The simple way of dealing with this would be to adjourn further discussion until next Wednesday, and that would allow Mr. Brisset to prepare a brief for submission to us. If there is nothing new in the brief, of course we are not going to hear him again. At that time also we could invite the minister to be here.

Senator Blois: I should like to move that the witness be given the opportunity to prepare a brief. Perhaps we can get further information next Wednesday. Personally, I am not satisfied that this is a good bill.

The Chairman: Well, you are entitled to that opinion and you are entitled to put it forward. My suggestion is that the committee should adjourn until next Wednesday, at which time we can look at Mr. Brisset's brief, if he chooses to prepare one. As far as I am concerned, if the brief is simply a repetition of what he has said here this morning we are not going to take more time on it. That is my personal view. I do think we should hear the minister next Wednesday also.

Senator Cook: As far as I am concerned, Mr. Chairman, I would be prepared to move the adoption of the bill, if we had a quorum. We do not have a quorum, however, and perhaps the best thing to do is to adjourn further discussion until next week.

The Chairman: We do not ordinarily do that type of thing. That is why I am suggesting we adjourn further discussion on this bill. It is only going to be four or five days. That would be more in line with the views of some members of the committee. Senator Burchill is of that view, too.

Senator Cook: Yes, I agree.

Senator Connolly: I also agree, Mr. Chairman. I think this committee always gives ample opportunity to someone outside who has an interest, as Mr. Brisset has on behalf of his clients.

The one discrepancy in the statements made by Mr. Brisset and the information given us by Mr. Bennett and Mr. McIsaac is the question of the discharge to the master by the operator of the sufferance warehouse and whether that in fact can be worked out, can be accommodated to the satisfaction of Mr. Brisset and his clients. I think perhaps this is a point upon which they might have discussion between now and our next meeting.

The Chairman: Well, Senator Connolly, it is not any part of our job to suggest that different parties get together.

Senator Connolly: I realize that. However, we are not in a position really to determine that fact.

The Chairman: But we are not dealing with that today.

Senator Connolly: But ultimately we will have to deal with it.

The Chairman: That is why I suggest we hear the minister. It is a question of policy. I did not want to put the question in that form to the witnesses who are here this morning. However, they can convey to the minister what our concern is.

The transcript will be ready before our meeting next Wednesday, and we will send it to the department and to the minister.

Senator Grosart, if you want to come back you are welcome, as our rules permit, in any event.

Senator Grosart: Well, it is nice to know you are regarded as welcome.

The Chairman: We will adjourn further discussion on this bill, then, until next Wednesday. The committee may meet in connection with some other bill earlier than that.

The committee adjourned.



FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS

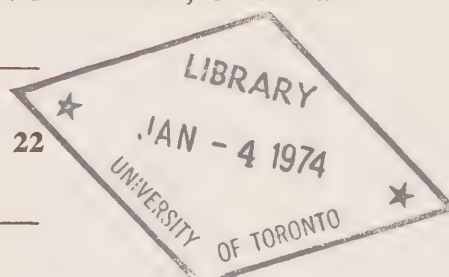
OF THE

STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 22



WEDNESDAY, NOVEMBER 21, 1973

Second and Final Proceedings on Bill C-189,

intituled:

“An Act to amend the Customs Act”

REPORT OF THE COMMITTEE

(Witnesses—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker—(20)

* *Ex officio members*

(Quorum 5)



Order of Reference

Extract from the Minutes of the Proceedings of the Senate, November 14, 1973.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Connolly, P.C., seconded by the Honourable Senator Laing, P.C., for the second reading of the Bill C-189, intituled: "An Act to amend the Customs Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Burchill, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, November 21, 1973.

(24)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 10 a.m. for further examination of the following Bill:

Bill C-189 "An Act to amend the Customs Act".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Buckwold, Cook, Lang, Macnaughton, Martin, Molson and Walker. (9)

Present, but not of the Committee: The Honourable Senator Petten. (1)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Witnesses:

*Shipping Federation of Canada AND
Protecting and Indemnity Association:*

Jean Brisset, Q.C.,
Counsel.

Department of National Revenue:

The Honourable Robert Stanbury,
Minister;
G. L. Bennett,
Assistant Deputy Minister,
Customs and Excise.

The Honourable Mr. Stanbury made a statement with respect to the above Bill and described to the Committee the proposed Regulations to be put into force following passage of the said Bill through Parliament.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 10.55 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

FRANK A. JACKSON,
Clerk of the Committee.

Report of the Committee

Wednesday, November 21, 1973.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-189, intituled: "An Act to amend the Customs Act", has in obedience to the order of reference of November 14, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

SALTER A. HAYDEN,
Chairman.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, November 21, 1973.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-189, to amend the Customs Act, met this day at 10 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are resuming our consideration of Bill C-189. Mr. Brisset has returned, and he has filed a written brief which I have read. It may be more cohesive than his oral submission but I do not see anything in the brief that we did not hear from him last Thursday.

Do you think there are any points in it that you did not cover then, Mr. Brisset?

Mr. Jean Brisset, O.C., Counsel, Shipping Federation of Canada, and Protecting and Indemnity Association: No, Mr. Chairman. As you very rightly put it, I have developed the same points I had developed last Thursday, but perhaps in a more cohesive manner. I have tried to indicate the very bad situation that we feel still exists in the Port of Montreal.

Since my submission was prepared over the weekend, I have obtained more accurate figures on the shortfall of cargoes delivered in the Port of Montreal. I said in my brief that in 1970 it was of the order of many millions of dollars. I have now a more accurate figure. It was of the order of a little more than \$4 million. In 1971 the situation improved considerably and the shortfall was of the order of \$2.6 million.

In 1972, although the record of the full experience is not yet available, it appears to have gone up considerably again, indicating that the situation has worsened.

If I may be permitted, there is another problem that came to my mind that I did not cover in the brief, and it is this. As you undoubtedly know, under the Carriage of Goods by Water Act, the liability of a carrier for goods lost or damaged is limited to \$500 per package or unit. Now, let us assume that a case containing valuable goods, valued at, say, \$5,000, were to be lost and the carrier were responsible for this loss—

The Chairman: Mr. Brisset, on this point you are getting outside the scope of the bill.

Mr. Brissett: No, this is what I am driving at.

The Chairman: Tie it in, then.

Mr. Brisset: The limit of liability of the carrier would be \$500, which he would pay to the consignee and say, "This is all that you are entitled to receive under the provisions of the Carriage of Goods by Water Act." But if, in addition, because these goods have been stolen, the carrier has to pay the duty—quite outside of his contract—because the law is that he is liable for the duty to the customs, then it may well be that the duty might amount to 25 or 30 per cent and, therefore, he would have to pay as duty an amount which may be considerably in excess of his limit of liability under the Carriage of Goods by Water Act. This is another problem.

The Chairman: Mr. Brisset, all we are dealing with here is that under this bill the master of the ship is liable for the duty and excise taxes in respect of the goods which he in his return to the customs authority shows that he took aboard at some foreign port.

Mr. Brisset: That is correct.

The Chairman: That is the effect of the bill, is it not?

Mr. Brisset: Yes.

The Chairman: And the neat point is whether in all circumstances the master of the ship should be given that liability and compelled to pay that duty, if the shortfall in the goods develops between the time they are landed and the time they are taken out of the sufferance warehouse. Isn't that the point?

Mr. Brisset: That is correct; and at a time when they are not truly under his control or in his custody.

The Chairman: We know that if the master of the ship has other cargo and he leaves that port for another port outside of Canada, he cannot physically keep those goods under his control. But this is a question of liability; he is obligated by law to make a return to the customs of the goods which he took aboard outside of Canada for discharge at this port. Isn't that right?

Mr. Brisset: Yes.

The Chairman: What this bill says is that when it comes to assessing duty and taxes, if there is a shortfall in the amount of goods the master is liable for the duty and taxes on that shortfall. That is the whole scope of the bill, isn't it?

Mr. Brisset: Yes, whether he has landed the goods or not, unless he can prove the exceptions mentioned.

The Chairman: That is right. Have you anything else to add on that point?

Mr. Brisset: No, Mr. Chairman.

The Chairman: Thank you very much. Is there any person who is with you? Mr. Burke, is he with you?

Mr. Brisset: Yes.

The Chairman: Mr. Burke, have you anything to add to this?

Mr. J. Burke, Managing Director, Canadian Chamber of Shipping: Thank you, Mr. Chairman. No, I have nothing to add.

The Chairman: Thank you, Honourable senators, have you any questions you want to ask Mr. Brisset?

Hon. Senators: No.

The Chairman: Honourable senators, we adjourned the meeting last Thursday to hear the minister, because the point was made that it was at least unfair. I think Mr. Brissett used the word "iniquitous," and I think Senator Grosart, who was at the meeting, was very pleased to find that there was another person who thought in the same descriptive terms, because he thought it was iniquitous too. So we decided we wanted to hear the minister. The minister is here this morning. Mr. Stanbury.

The Honourable Robert Stanbury, Minister of National Revenue: Mr. Chairman and honourable senators, I thank you for the opportunity you have afforded me this morning to clarify some of the matters connected with Bill C-189, which is before you. I have with me the Deputy Minister of Customs, Mr. Bennett, who may be able to answer questions that I cannot.

I might say it came as a surprise to my officials to find that there was the concern that was expressed here at the last sitting of your committee because this bill, as you know, was given first reading last June and there has not been a suggestion of any kind, from any source, that it was considered iniquitous or even unfair.

We regret not having heard from the industry up until now, because, of course, it would be very helpful to us to hear from them in considering whether any amendments should be proposed to such a bill.

I think I should stress that it is not the department's intention that on passage of the proposed amendment there will be any hardship placed on the shipping industry. Quite the contrary. The amendment and the regulations which we would then be able to develop under the act would more clearly outline the master's or the shipping company's responsibility, as distinct from that of the sufferance warehousekeeper.

The Chairman: How would you formulate those regulations? It seems to me that there is a general liability

under the law to pay duty and taxes on goods coming into the country. I assume that would be the authority for any regulations that you might pass. I was wondering if you could give us some indication of the extent to which, by regulation, you might lighten the burden of liability on the master of the ship.

Hon. Mr. Stanbury: Yes, Mr. Chairman. I understand that these proposed regulations have now been discussed with the representatives of the shipping industry, and we would want to discuss them as well with the representatives of the warehousing industry. These would provide options that will enable the carrier and the warehousekeeper to comply with the amendment without interfering with their operational procedures. The main section of the proposed regulation would read something like this:

The warehousekeeper concerned shall acknowledge to the carrier goods landed by the carrier in the sufferance warehouse area, except where the warehousekeeper and carrier mutually agree that such acknowledgement is unnecessary. When an agreement as described exists and responsibility for loss of goods cannot be assigned fully either to the warehousekeeper or carrier, the warehousekeeper and carrier jointly are liable to the Crown for duty and tax payable.

It can be seen that within this regulation both parties have the opportunity to exercise not only a choice of compliance method but, additionally, greater control over cargo security.

My officials have pointed out that not all cargo landed is equally vulnerable to a loss. Large size, heavy weight and low value are their own deterrents. It may be, then, that the carrier and warehousekeeper will waive acknowledgement of that kind of cargo. On the other hand, part of the lading may be so valuable that the cost of loss may outweigh the cost of delay, causing the carrier to assist the warehousekeeper in checking the goods against the manifest in order to obtain an acknowledgement.

It would seem that the warehousekeeper who has given acknowledgement of a valuable shipment to a carrier will assure the security of that shipment henceforth.

The joint liability outlined in the proposed section could match the division of liability assessed against each party in the settlement of the owner's claim for goods lost.

It is also proposed that the regulation would state that a lack of acknowledgement by the warehousekeeper to the carrier would be proof that a mutual agreement between the parties exists; that is, an agreement to share the liability.

There has been concern expressed by the Ontario Sufferance Warehousekeepers' Association about the idea of a warehousekeeper's acknowledgement to the carrier, in that this might interfere with the contract of carriage. But we are suggesting that that concern could be dis-

pelled by placing in the regulation wording similar to that in section 278 (3) of the Customs Act, along these lines:

Nothing in this section can be construed to change the existing contractual rights and liabilities, expressed or implied, between the warehousekeeper, the carrier and the owner for the value of the goods, should loss or damage occur to said goods.

The Chairman: This would deal, I take it, with some of the cases. A substantial amount of the goods must be safely landed because of the very character of the goods. For example, if they are bulky they cannot be sneaked away—if they happen to be a load of rails, for instance—so the concentration would be on small packaged goods.

Hon. Mr. Stanbury: I would ask Mr. Bennett to deal with that.

Mr. G. L. Bennett, Deputy Minister, Customs and Excise, Department of National Revenue: Honourable senators, the concentration, would be on packaged goods of high value. As I believe our friends from the Shipping Association would say, it would be on goods in the electronics field, such as calculating machines, cameras, and things of that kind. These are goods of high value which are contained in smaller packages.

These are the goods for which we foresee the warehousekeepers and the shipping companies, through our proposed regulations—working with ourselves, that is, because we are interested in this too—will try to ensure that there is a degree of liability: either they have the goods in the warehouse or they received the goods in the warehouse, so that we know whether they are missing and from whom they are missing. If, indeed, we could not decide, between the shipping company and the warehousekeeper and ourselves, just from whom these goods had disappeared, or whose custody they were in at the time they disappeared, then we would levy the amount of duty and taxes against both parties mutually. That seems to be the only fair way that it could be done when goods disappear and when nobody can be held to be fully liable.

The Chairman: Mr. Minister and Mr. Bennett, I notice in Mr. Brisset's brief—and I don't know if you have read it—that on page 5 he says:

The thefts will mainly occur during the period which elapses between:

- (a) the time the goods are taken from the ship's tackle during discharge to their place of rest on the shed floor of the sufferance warehouse, normally a continuous operation; and,
- (b) the time they are later delivered by the operator of the warehouse to the importer or to the bonded carrier who will deliver the goods to the importer at final destination.

So Mr. Brisset limits the area within which there is the opportunity for pilfering, I would say, generally to take place. That is, because the operation from the unloading to the sufferance warehouse is of a continuous

nature, the pilfering, if any, would be confined mainly to the period when the goods are in the sufferance warehouse.

The evidence we had the other day was that the sufferance warehouses, whether they are structures or whether they are designated areas of the dock, are the property of the National Harbours Board and are leased to entrepreneurs or independent persons who operate the sufferance warehouses.

The situation we are looking at is that the master certifies to the customs people the quantity of goods that he took aboard for this destination, and, ultimately, when you come to account for duty at the end of the road, which would be in the sufferance warehouse—and that is the place where the pilfering is most likely to occur—you find a shortage.

Now, the goods are subject to duty, and the customs people must collect that duty. They have a bond from the operator of the sufferance warehouse, but are the terms of that bond such, Mr. Bennett, that you can simply establish the value of goods landed by the master and the value of goods that the warehouseman will acknowledge, and you can collect on the bond?

Mr. Bennett: The bond that we have with the sufferance warehousekeeper would allow us to collect duty from the warehousekeeper for goods lost in his possession, provided it could be clearly established, senator, that this is where the goods disappeared; and this is the whole problem. In modern shipping, with the speed of mechanized unloading, of moving from ship's side and dockside into a warehouse, with the amount of capital investment involved, and all the speed with which industry has to move these days, the establishment of that line between the responsibility of the shipping firm having discharged the cargo and the warehousekeeper having received the cargo is the area where we are having extreme difficulty. There are only, it seems to us, one or two ways of settling it. Either we slow everything down, and do an actual tally, which should be the warehousekeeper's responsibility to make, and the ship owner's responsibility to demand if they wish to escape from these levies or, to do it the way we are suggesting. That is lump it all together in one group—dockside, shipping company and warehousekeeper, and then at the time of ex-warehouse, discover that goods have been disappearing, and say, "All right. You people are jointly liable unless you can prove to us either one of you is totally liable."

Now, this is the only way we can solve it, short of the suggestions, perhaps, in the brief here, which I have quickly scanned, with respect to tightening security on the dockside.

Senator Molson: Mr. Chairman, we are dealing here with a situation where the government is making demands of the people engaged in commerce. Surely, in making these demands, government should introduce conditions that make these as reasonable as possible?

Now, the very well-known and obvious trouble in these harbours is the fact that everything is going over the wall or out the gate. We are talking about high cost small packages; but I remember that not so long ago, I think it was 40 tons of copper went out. I think it was copper, and I think it was probably going for export—I assume it was not coming in—but my point is that the pilferage is notorious there. I know yours is not the department responsible for preventing this, but surely the government as a whole, in making demands, however reasonable, should set the conditions so that this does not impose hardship?

The common gossip, and the reporting in the media, and so on, is that particularly in the harbour of Montreal the pilferage and theft have been just fantastic. I think in the paper yesterday it said that one of our latest murders related to this well-known pilferage there. This is a big-gang operation, and I wonder if we should not, in dealing with this bill—which seems perfectly logical, as far as I can understand—bring up the fact that the government perhaps is not playing its part in making conditions reasonable.

The Chairman: Well, senator, what has been suggested this morning has been that the regulations which would have their basis in the statute itself would assess the liability against the two parties to the transaction—that is, the master who carries the goods and lands them, and the sufferance warehouseman who receives them; and the regulations would say that they are both liable, and if they cannot agree, why, I assume it is intended to assess both—or is it intended to allocate liability?

Mr. Bennett: No, it would be intended to assess both, senator.

Senator Cook: That was not quite the point, was it, Senator Molson? As I understand the point, and I think it is right, it is that the shop owners and others have not been able to throw enough weight into the matter to have the conditions in the Port of Montreal or elsewhere properly supervised.

Now, the question I would like to ask, following on from Senator Molson, is: Can the Government of Canada add its weight to whoever has the authority or the jurisdiction over the Port of Montreal, to take that as an example?

The Chairman: That is the National Harbours Board.

Senator Cook: Well, has the Government of Canada anything to add itself to try to make these conditions more respectable, or more decent, or more satisfactory, for the people using the ports who, in the last analysis, are the people of Canada?

The Chairman: Well, Senator Cook, I do not understand that the customs department or the government is directly responsible for the operation of the port. Is it not the National Harbours Board?

Senator Cook: No, but the customs department knows the conditions there, and they are now endeavouring,

and I think quite properly, to protect themselves by putting the onus on the master. That is all right, but that does not correct the situation in the Port of Montreal.

Now, I am asking: Is the customs department, or the Government of Canada, lending its weight, its authority, to the efforts of the ship owners, and the rest, to have a properly supervised, secure port?

The Chairman: Well, what you are really asking is: What, if anything, is being done in that direction?

Senator Cook: Yes, Mr. Chairman.

The Chairman: Mr. Stanbury, have you an answer to that?

Hon. Mr. Stanbury: Well, no. I suppose the Minister of Transport might be able to assist you there, but I think it has been mentioned that the difficulty is in Montreal. There has been no suggestion in the brief that there is this difficulty elsewhere, and, as honourable senators have mentioned, Montreal seems to be the point of concern.

I can only say that insofar as customs is concerned, we will certainly see that these comments are brought to the attention of the Minister of Transport. I will see personally that your comments are brought to Mr. Marchand's attention. And whatever moral suasion we can bring to bear, we will. Customs is certainly interested in having the laws of the country obeyed, and we in fact represent many departments of government at the borders, in trying to protect Canadians from breaches of our laws. So we certainly have a personal interest in this matter. We do not have authority over the Port of Montreal, as has been pointed out, but we will certainly see that this concern is brought to Mr. Marchand's attention and, through him, to the National Harbours Board's.

Senator Lang: I was thinking, perhaps, that the thrust of the questions, Mr. Chairman, is rather the enforcement of the Criminal Code. I think this is not a question of Transport jurisdiction; it is a question of the criminal law. We are talking about theft, and possibly organized crime. It seems to me it is a matter of how effectively the provincial authorities are enforcing the code. Maybe the minister is—

Senator Molson: Not the provincial—

Senator Lang: The enforcement of the Criminal Code is a provincial responsibility. Perhaps the minister should pass on these remarks to the Minister of Justice and the Minister of Transport.

Senator Macnaughton: Mr. Chairman, I have listened with a great deal of interest to what the minister said about passing on remarks, but the situation has existed in the Port of Montreal for years and years, and to the extent that insurance companies are very careful about insuring cargoes in the Port of Montreal. The port itself has steadily gone down, and every year we have these

beautiful reports from the port manager that things are going to be better, whereas, in fact, they are getting worse. Three years ago, throughout Europe the reputation of Montreal as a port was deplorable, and in fact a circular was sent around to various insurance companies saying, "Don't ship to Montreal. Go to other ports."

I appreciate very much the position of the minister, but I would recommend strongly that they get together and talk this question over.

Our witness here today, Mr. Brisset, has made the same point at page 7 of his brief about the National Harbours Board Police. If I understood him correctly a few minutes ago, he said that the loss a year or two ago was \$4 million, and that recently it was \$2 million. So, obviously, this is not petty theft; it is organized theft and we have to do something about it. There is not much point in the minister's saying, "We will talk it over with our colleagues." When is something going to be done? There is obviously the right way and the wrong way of operating the harbour. Obviously, the present way is not the right way. Perhaps we should call Mr. Brisset. He might have something to say from the practical aspect in the local district.

The Chairman: He is here and he has already made a statement, but I do not think you were here when he did so.

Senator Macnaughton: No. At any rate he has a suggestion on page 7.

The Chairman: The neat point seems to be that primarily, the protective service in the port is the responsibility of those who operate the port, namely, the National Harbours Board. They appear to have recognized this fact because they are supposed to be increasing the number of the security force; but, no matter what increases they may have made, the pilfering still goes on, which suggests that it must be pretty well organized.

Now, so far as the customs authorities are concerned, they have a responsibility under the law to collect duty and excise tax. So, when a master has an obligation to report to customs what goods he has on board and proposes to land in Montreal, and when it comes to checking on the goods and requiring the operator of a sufferance warehouse to give a receipt it is found there is a shortage, the treasury is nevertheless entitled to the duty and excise tax on the goods. But the goods have disappeared. So, who is going to pay that? This bill proposes that the master be given the primary responsibility, because he certifies in his report that he has a certain quantity of goods which he is landing at the Port of Montreal.

In the regulations, which the minister indicates have been drafted and are now being discussed with those interested, there would be provisions for a joint liability; that is to say, there would be a liability on the master and a liability on the operator of the sufferance warehouse. How would you go further, from the point of view only of the collector of duty who has a responsibility under the law?

Senator Cook: I do not think you can, Mr. Chairman. It seems to me that nobody can disagree with the bill from the point of view of the customs; but then, as the brief says, this does not do anything to correct the situation as it exists. In fact, we find the brief saying this:

What is required is a government police force with men armed and in uniform well versed in police work. Security could be so tight in respect of the sheds heretofore mentioned and their access, if the required steps were taken, that organized theft could probably be stopped completely. Petty pilferage will always occur as in any other port but is not considered to be of great consequence.

I am in favour of the bill, Mr. Chairman, but I do not think it should stop there. We now have the minister before us, and I just wonder if he would be good enough to undertake to carry the brief a bit further and bring these representations to the attention of the Minister of Justice or the Minister of Transport, or whoever else may be concerned, to see whether it might not be possible to have some meeting of minds whereby a solution, such as that outlined in the brief, could be arrived at. I do not think it is quite fair for us to pass a bill which protects the interests of the treasury, but does not do a thing for anybody else.

Hon. Mr. Stanbury: I shall be pleased to do that, senator. However, I want to stress that we are not imposing any new obligation here; we are simply trying to clarify a situation. Even now, someone has to take responsibility for the loss of goods, and someone has to be liable to the importer or whoever owns the goods lost. So, therefore, it does not seem unreasonable that someone should be responsible to the Queen for her loss.

What is proposed here simply clarifies the responsibility of the master and makes it perfectly clear that his responsibility is the same—and the carrier's responsibility is the same—as it is in every other mode of transport, and even as it is in the case of inland shipping now. So, there is no new principle involved here, and we are not imposing any new or unreasonable burden on the carrier.

I think it is perfectly fair for the shipping companies to take this opportunity to underline the great difficulties they may experience in the Port of Montreal, and I am certainly concerned about that, and I shall be glad to take note of the representations of the Shipping Federation, together with those of senators, and to convey them to both the Minister of Justice and the Minister of Transport. But we have a responsibility in the Department of National Revenue which we must carry out, and we are appealing to Parliament to assist us in carrying out that responsibility.

Senator Molson: Mr. Chairman, I should like to ask the minister if his department is responsible to contain smuggling? If not, who is?

Hon. Mr. Stanbury: We are responsible for the administration of the Customs Act, and within that act the

Royal Canadian Mounted Police are stated to be customs officers as well. And in terms of investigation and prosecution of smuggling offences, it is the Royal Canadian Mounted Police who are, in practice, the enforcing agency.

Senator Molson: Acting on their own or acting on behalf of your department?

Hon. Mr. Stanbury: Acting on their own, under the Customs Act, if I recall correctly.

Senator Molson: And you carry the responsibility for the Customs Act, so that in fact when there is theft from one of the warehouses you are speaking about, and the goods get into the country, there is a responsibility either on your department or on the RCMP or on both. But all I want to say here is that in bringing this up, I should like with the greatest respect to suggest that the Department of Transport should be concerned as well. Here we are talking about the National Harbours Board as though it were the "Smith Company" or something like that, whereas, in fact, it is Canada—it is the country. But I think in making the changes that this bill contemplates, and which may be perfectly all right, it is not wrong for us to look at something that might be regarded as being extraneous but which certainly is related to the ability of these people to conduct their business, and which is a major factor in the cost of their doing so. I think we would be very gratified if the minister would make a serious effort, with his fellow members of the government, to try, once and for all, to bring this very unhealthy situation in Montreal to some sort of successful conclusion. It will never be final, but some sort of reasonable improvement would certainly be welcomed.

Senator Buckwold: Is it true, as I have heard rumoured, that on one occasion the stevedores went on strike because of the tightening up of security regulations in Montreal Harbour? I want to make clear I am only repeating what somebody has indicated to me. We do not really know of some such incident?

Hon. Mr. Stanbury: We do not know, senator.

The Chairman: Because their preserves were being invaded?

Senator Buckwold: Yes. I have heard that several times, and it seems that really you get two immovable forces there. I hope that the Government of Canada has, as I feel they should, the power to control the Port of Montreal.

The next question is that it has been again generally stated that what you are doing here is enacting what is the customs law of most nations. Is that correct?

Hon. Mr. Stanbury: Yes.

Senator Buckwold: If a carrier takes goods to Hong Kong and there is a difference between what is on the manifest and what is cleared at customs, the ship owner

and the master are responsible—is that correct? In other words, we are dealing with what is basically the law of the sea?

Hon. Mr. Stanbury: Yes.

Senator Buckwold: I can only repeat that I do not propose to object to the general principle. What is really concerning me, and I mentioned this at the last meeting, representing the point of view of the general public, is that in the end it is the consumer who pays. What I worry about is that the final outcome of this is going to be that the ship owners are just going to insure themselves against the loss, and that expense will be added to the cost of the goods. Then, for the Government of Canada to collect their relatively few hundred thousand dollars would in fact add a great deal to the cost of importing goods into Canada. The insurance rates would go up. Or if the shipping companies decided they were going to unload piece by piece, to get their proper receipt for every piece of cargo, the turn around time would be so long that again it would add to the cost of importing goods. The shippers are not going to lose that money. I only hope that it is not the consumer, in the long run, who is going to pay and pay and pay for what we are trying to do here.

Hon. Mr. Stanbury: Mr. Chairman, I think it is quite the opposite. This is not only consistent with the law in other countries and consistent with the law that applies to other carriers in other modes of transport, but it confirms what was thought to have been the law. There seems to be no disagreement among senators about the logic of what we are proposing. In other situations, it is thought that this kind of responsibility inhibits the loss of goods. There is no reason to think that, with this responsibility clearly on the master and on the carrier, they would be less careful or even as careless as they are now about the loss of goods. Surely, both the warehouse people and the carriers are going to be more careful about the loss of goods and there will be less loss and, therefore, less burden on the Canadian consumer eventually, with a clearer responsibility.

Senator Buckwold: I do not think anyone can argue with that, except that in practice it will not work, if what we hear about the Port of Montreal is true.

Hon. Mr. Stanbury: We are not just talking about the Port of Montreal Mr. Chairman; we are talking about all the ports of Canada. It has been pointed out that there is a serious problem of security in one port. We must be careful, I submit with respect, not to distort our whole revenue collection procedure because of some law enforcement problem in one port—as serious as that may be, and I am willing to accept it as being serious. The effect of our proposal, as applied generally across Canada, will surely be to cut down loss and cost to the consumer.

Senator Cook: I do not think anyone is objecting to the principle of the bill, Mr. Minister. I think it is the background we are worried about. It is whether the Govern-

ment of Canada, whether it is your department or another department that is responsible, can stop here, by putting this act into force, which protects their interest, or whether they also have some responsibility to make sure that we have the rule of law in the Port of Montreal and not mop law. I am not saying "you"; I say that is the view of the witnesses, with which I agree, and I think the government should do something about it.

The Chairman: Looking at it from the point of view of the discussion so far, it would appear that a copy of the proceedings certainly should go from this committee to the departments that might be concerned with this. That, of course, includes, in one aspect, the customs department itself, since they do use the RCMP and give them authority as customs officers in enforcement of some provisions of the Customs Act. It would also go to the Department of Justice and, possibly, to the Department of Transport. Are they responsible for the National Harbours Board?

Hon. Mr. Stanbury: The National Harbours Board reports to Parliament through the Minister of Transport.

The Chairman: Possibly it should go to the law enforcement officers of the various provinces. We cannot just send it to the law enforcement officers of the Province

of Quebec, because this is a bill of national application. Of course, it is always open to us to start an inquiry, but that may not be very satisfactory in itself, as you get lost in a maze of words, with different people swearing to different things.

Senator Molson: I think the minister has undertaken to bring it up with his colleagues, and I think this really is much more effective. I think we should send them copies of the proceedings, but I think it would be much more effective if the minister took it up with his colleagues, as it would be explained and the matter would be put in a better light.

The Chairman: I take it we are accepting the statement of the minister that he will say to his colleagues that this question and the subject matter or today's discussion were raised in this committee and were of real importance, and that he will stress this.

Hon. Mr. Stanbury: I certainly will.

The Chairman: On that basis, honourable senators, are you prepared to report the bill without amendment?

Hon. Senators: Agreed.

The meeting adjourned.



FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 23

TUESDAY, DECEMBER 11, 1973



Complete Proceedings on Bill C-132,

intituled:

“An Act to provide for the review and assessment of acquisitions of control of Canadian business enterprises by certain persons and of the establishment of new businesses in Canada by certain persons”

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly	Martin
(<i>Ottawa West</i>)	McIlraith
Cook	Molson
Desruisseaux	Smith
*Flynn	Sullivan
Gélinas	Walker—(20)
Haig	

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, December 6, 1973:

"Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Bourget, P.C., for the second reading of the Bill C-132, intituled: "An Act to provide for the review and assessment of acquisitions of control of Canadian business enterprises by certain persons and of the establishment of new businesses in Canada by certain persons".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, December 11, 1973

(25)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to examine the following Bill:

Bill C-132 "An Act to provide for the review and assessment of acquisitions of control of Canadian business enterprises by certain persons and of the establishment of new businesses in Canada by certain persons".

Present: The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Blois, Buckwold, Connolly (*Ottawa West*), Cook, Gélinas, Macnaughton, Martin, McIlraith and Smith. (12)

Present, not of the Committee: The Honourable Senators Carter, Godfrey, Lafond, Langlois, Lapointe, McElman and van Roggen. (7)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Mr. R. J. Cowling, Legal Adviser to the Committee.

Witnesses:

Law Firm of McMillan, Binch, Toronto:

W. A. Macdonald, Q.C.;
E. K. Weir.

Department of Industry, Trade and Commerce:

The Hon. A. W. Gillespie,
Minister;
H. Lazar,
Adviser,
Foreign Investment Policy.

Department of Justice:

F. E. Gibson,
Director of Legislation.

At 12 Noon the Committee adjourned.

2.15 p.m.

(26)

At 2.15 p.m. the Committee resumed consideration of the above Bill.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Beaubien, Blois, Buckwold, Connolly (*Ottawa West*), Cook, Desruisseaux, Gélinas, Hays, Macnaughton, Martin, McIlraith, Molson and Smith. (15)

Present, not of the Committee: The Honourable Senators Everett, Godfrey, McElman and van Roggen. (4)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and Mr. R. J. Cowling, Legal Adviser to the Committee.

Witnesses:

Department of Industry, Trade and Commerce:

The Hon. A. W. Gillespie,
Minister.

Department of Justice:

F. E. Gibson,
Director of Legislation.

Department of Industry, Trade and Commerce:

H. Lazar,
Adviser,
Foreign Investment Policy.

At 3.20 p.m. the Committee proceeded *In Camera* and after discussion it was moved that the Bill be reported without amendment.

The question being put on the Motion, the Committee divided as follows:

YEAS—10

NAYS—1

The motion was declared *carried*.

The Chairman then read to the Committee a draft report.

After discussion and upon motion it was *Resolved* that the Chairman present the Report, as amended, to the senate.

At 4.00 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

Report of the Committee

Tuesday, December 11, 1973.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred the Bill C-132, intituled: "An Act to provide for the review and assessment of acquisitions of control of Canadian business enterprises by certain persons and of the establishment of new businesses in Canada by certain persons" has, in obedience to the order of reference of December 6, 1973, examined the said Bill and, for the reasons hereinafter mentioned, now reports the same without amendment.

This was not the first time your Committee had occasion to consider the above Bill, which received First Reading in the House of Commons on January 24, 1973. As a result of authority given to your Committee by the Senate on May 16, 1973 to consider the document entitled "Foreign Direct Investment in Canada" (tabled in the Senate on May 15, 1972) and the Bill based thereon, being Bill C-132, your Committee held hearings and tabled a Report on July 12, 1973 (see appendix to the Debates of the Senate of that date at page 873).

As a result of the deliberations of your Committee and the submissions made to it at that time, a number of areas requiring clarification or, in the opinion of your Committee, corrections were identified and set forth in its Report as recommendations for amendments to the Bill (see Specific Recommendations, at page 875 and following of the Report). Your Committee was in communication with the Honourable the Minister of Industry, Trade and Commerce prior to the formal tabling of its Report as to those parts of the Bill which appeared to your Committee to require amendment. On July 5 the Minister tabled a series of amendments to the Bill in the Commons Committee on Finance, Trade and Economic Affairs which was also considering the Bill at that time. These and other amendments were incorporated into the Bill by the Commons Committee which reported the Bill, with amendments, on July 20, 1973.

A number of the areas of concern to your Committee were covered by the Bill, as amended, which was passed by the Commons on November 26, 1973.

Of sixteen Senate recommendations, ten were dealt with by the Commons amendments. Of these ten, six, in the opinion of your Committee, can be said to meet fully the objections which prompted your Committee's recommendations. A further four amendments responded at least in part to your Committee's recommendations, and in the remaining six cases, no amendments were made (see Appendix "A" to the Debates of the Senate, December 4, 1973).

Of the areas not touched or only partially touched by the Commons amendments, four, in the opinion of your Committee, emerge as having particular importance:—

- (1) Provision for adequate recourse to the Courts;
- (2) The role of the provinces;
- (3) The position of real estate transactions under the Bill; and
- (4) The presumption (although rebuttable) that 5% share ownership constitutes acquisition of control.

The Minister of Industry, Trade and Commerce, the Honourable Alastair Gillespie, together with Mr. F. E. Gibson, Director of Legislation, Department of Justice, and Mr. Harvey Lazar, Special Advisor to the Minister, appeared before your Committee on December 11. The Minister and his officials responded to questions on a broad range of subjects relating to the Bill and the way in which it is expected it will be applied; for example, the Minister indicated that binding rulings on the question of non-eligibility would be given to an applicant notwithstanding that no specific acquisition was contemplated at the time. Reference is made to Issue No. 23 of the Proceedings of the Committee for other important statements made by the Minister; however, your Committee considers it expedient to outline his statements and undertakings in respect of the four matters above referred to.

On the question of appeals to the courts, Mr. Gibson indicated the manner in which, in his view, recourse could be had to the courts under section 18 of the Federal Court Act, in view of the definition in paragraph 2(g) of that Act, for judicial review of purely legal questions (as opposed to the policy question of whether an investment is of "significant benefit" to Canada) disputed by an applicant. The Minister undertook that should these remedies not prove efficacious in practice after an opportunity for some experience under the Bill, he would recommend that appropriate amendments be brought forward.

On the question of the role of the provinces in the review process, the Minister stated in very specific terms his proposals for communication and consultation with the provinces.

On the difficult question of the treatment of real estate transactions under the Bill, the Minister undertook to bring forward guidelines illustrating what kind of transactions would be reconsidered to be acquisitions of a business and consequently within the purview of the Bill, and what kind of transactions would be regarded as acquisitions of property, and therefore not within the scope of the Bill.

Finally, on the question of whether the figure of 5% was too low a figure for the purpose of presuming acquisition of control, the Minister emphasized the rebuttable nature of the presumption created and undertook to recommend amendments to the legislation to increase the figure if experience indicated that the 5% figure, arbitrarily select-

ed in the first place, proved lower than was necessary to properly accomplish its purposes.

In your Committee's opinion, specific amendments are not the sole means of clarifying questions which arise under legislation. The present Bill, if enacted, will be the first such legislation of its kind in Canada. The Bill has raised a number of questions which, as a result of hearings before your Committee and its deliberations on the Bill, as well as discussions in other places, have been fully aired. In this connection your Committee should mention a further submission made to it at its hearing on December 11 and to which the Minister appeared receptive, pointing out that the amendment to paragraph 3(3)(e) of the Bill may not adequately exclude certain kinds of internal reorganization other than the "statutory" or "Letters Patent" type to which the amendment appears to be confined.

It would be perhaps impossible to deal effectively at this stage, by way of amendment to the Bill, with all possible objections to and concerns about the Bill and its operation. As the Minister acknowledged, doubtless the need will arise, as experience of operation of the Bill is gained, for amendments to it and your Committee recommends to the Minister who will be charged with the responsibility for administration of the Bill that, follow-

ing its enactment and in the light of practical experience under it, all the concerns of your Committee expressed in its recommendations be noted in applying the Bill, in the preparation of guidelines which may be issued under the authority thereof and, where necessary, by specific amendment to the legislation.

In 1971 your Committee made a number of recommendations for changes in Bill C-259, the Income Tax reform legislation. In order to avoid further delays in passage, the then Minister of Finance undertook to bring forward in due course certain amendments to meet your Committee's recommendations. Your Committee notes with satisfaction that all of those amendments have now been made.

It is in a similar spirit and with similar confidence in the undertakings and statements of the Minister of Industry, Trade and Commerce made before your Committee on December 11 that your Committee is pleased to recommend passage of Bill C-132.

Respectfully submitted.

Salter A. Hayden,
Chairman.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Tuesday, December 11, 1973.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-132, to provide for the review and assessment of acquisitions of control of Canadian business enterprises by certain persons and of the establishment of new businesses in Canada by certain persons, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, I call the meeting to order. We have before us Bill C-132 and, as I indicated last night in the Senate, it is intended that the minister will attend at or about 10.30 this morning, or maybe earlier. He will then be available during the day, this afternoon and this evening, and tomorrow if we need him.

In the meantime, we have a witness who has filed a brief, a copy of which I believe all members of the committee have received. I suggest that we proceed with discussion of that brief and hear the two witnesses who are appearing, Mr. William A. Macdonald, Q.C., and Mr. E. K. Weir.

Mr. William A. Macdonald, Q.C., Law firm of McMillan, Binch, of Toronto: Thank you, Mr. Chairman.

Honourable senators, I would first like to express our appreciation for the opportunity to appear before your committee to express certain views relative to the Foreign Investment Review Act which was passed last month in the other place.

Mr. Chairman, I distributed to the committee, through your clerk, a technical memorandum and notes for my opening statement. I do not know what would suit the committee, but I felt that, having distributed the opening statement, it might form part of the record and I could move rather more quickly through it in order that honourable senators would have the opportunity to ask questions. Is that a satisfactory procedure?

The Chairman: I suggest that you tell us, in a reasonably summary manner, the points in issue.

Mr. Macdonald: In view of the discussions that seem to appear perennially in the media these days in connection with conflicts of interest, perhaps I should say that Mr. Weir and I have had occasion during the last several months to advise a good number of companies who have been concerned with regard to the application of this statute in various types of situations which they have drawn to our attention.

Because in the course of our consideration of these questions we found the bill applied to various kinds of transactions which seemed to us to be inappropriate, we sought this opportunity to attend here today. We are appearing, however, as individuals, and the views we

express are our own, and questions may be asked on that particular basis. We have read through most of the proceedings of your committee and are aware of the fact that many major issues have been and can be raised with respect to the constitutionality of the bill, the effect of a centralized screening agency on the ability of the provinces to have some influence on the development of their own economy, and the general impact on availability of foreign investment capital, which many continue to feel will be important in the development of the country. There is also simply the general reliability of a centralized government screening agency in terms of its sheer ability to assess the presence or absence of significant benefits in particular transactions.

We recognize that these are important issues, but we propose to direct our attention, in a much more narrow way, to four types of cases where we feel that, for the reasons we will mention, there has been an overreaching in the statute that is not related to the achievement of the particular stated policy objectives. The four cases I can describe very briefly, and then get into a little more detail later.

The first are internal reorganizations, inside Canada, where there is no change of control. The second are internal reorganizations, outside Canada, that may affect the change of control of Canadian business assets, again where there is no change of control. The third are those carrying on or expanding existing businesses or launching a new but related business for a corporate group through a different corporation than the one in which the existing business is already carried on, again where there is no control change. Finally, these are foreign transactions where there is a Canadian element, but where it is only a small and incidental part of a much larger transaction and is primarily concerned with businesses outside Canada.

Our basic proposition can be put very simply: that is, that the extension of the act in these cases is an overreaching which is unfair; it is unnecessary in terms of the objectives of the act; it is unlikely to be productive of any significant benefits to Canada; and it is entirely likely to constitute an unproductive administrative burden for the screening agency.

There are four types of situations I have mentioned, and we have prepared and made available to your committee a technical memorandum which goes into the precise legal details as to how the act, as it is drawn, in fact applies in each of these cases, why it does not appear necessary in terms of the stated objectives of the act that it should apply, and precise language as to changes that could be made in order to deal with these particular situations.

I should say that we are well aware of the fact that it is late in the day, in terms of the passage of this act through

Parliament, to be pressing for immediate changes in the act before it becomes law; and I would like to stress that we would not be here if we felt that the cases which we are drawing to your attention were merely academic or housekeeping matters, or even matters that might involve temporary inconvenience which could be lived with for a few months and be cured later by amendments if practical experience confirmed our concerns.

Senator Connolly: Mr. Macdonald, were you before the house committee?

Mr. Macdonald: I was not before the house committee, senator. I might say that at that time I was hopeful that the views I am now going to express had been understood in ministerial quarters and might have been responded to. That is the essential reason why I am here.

Senator Connolly: This is your first presentation to Parliament?

Mr. Macdonald: This is our first presentation. There are four reasons why we think that this is not something that should be simply shunted over to a later time. First, we are satisfied, from the experience in our own office, from the number of cases that we look at normally, that there are going to be many more cases than appear to be in the mind of the minister and his officials that will require screening if the act extends to these cases. So we see an unnecessary administrative burden for no benefit. Secondly—

The Chairman: Mr. Macdonald, is the situation this, that the transactions that you are discussing would, under the bill as it stands now, appear to require screening?

Mr. Macdonald: This is correct.

The Chairman: And it would appear, from your knowledge of them, that there will be some difficulty in presenting evidence of "significant benefit" in terms of the factors that are outlined in the bill—is that it?

Mr. Macdonald: That is absolutely it. The second reason—and perhaps this is the most important reason. I sometimes think that in relation to the reason I am going to mention, we are in a state that you get into when you are driving down the highway at 80 miles an hour. You lose your sense of reality that anything serious can really happen to you travelling at that kind of speed. I am talking about the effect of this kind of overreaching on our relationships with the United States in the present state of those relationships. In order that this should not be simply a personal expression of view, we made a current check on the state of these relations at the governmental level, both here and in Washington; and it is clear to us, from this check, that these relations are going to be subject to many strains in the months ahead, and little or no progress—if not some regress—has been made on a large number of outstanding issues, many with very important consequences for the economic health of Canada.

It seems to us to be, at the very least, imprudent to add a new abrasive element to these relations when there is no reasonable basis for expecting tangible benefits to Canada for doing so.

I should like to stress here that we are not talking about a feeling to assert a Canadian interest, where there is a Canadian interest, simply out of anxiety for the effect on Canada-U.S. relations. What we are talking about, in

effect, is a form of carelessness in having a statute overreaching itself in ways that, as the chairman said, there is no prospect in terms of the kinds of transactions we are talking about that are susceptible.

The Chairman: Well, the chairman did not say that. I was simply stating your position.

Mr. Macdonald: Well, as the chairman accurately described my position.

The third reason for proceeding with more care than we appear to be, from where we sit, is that it is going to continue to be important to Canada that it has some reputation for reliability in relation to capital from outside.

Finally, and perhaps not as important—I think not important in the United States context, from what we were able to discover in our discussions in Washington—Canadian business is coming of age. Many major Canadian companies are beginning to exhaust the potential for their products and services in this country and are finding it necessary to become multinationals themselves. It seems, again, foolhardy and short-sighted to create unnecessary and unfair burdens on non-resident investors here at the very time when it seems to us it has never been more important for Canadian business to have a reasonable climate to invest in other countries.

I should like now to move directly to the types of transactions.

The Chairman: I have a general question, Mr. Macdonald, which I should like to put to you before you move on. If there is no change of control involved in the transactions you are talking about, then would it not be within the scope of the minister's authority in making the guidelines to decide that there is no acquisition of control involved?

Mr. Macdonald: That is not how we read the statute, Mr. Chairman. We do not see any discretion in the minister as to when the act bites and when it does not. If, as we describe in the technical memorandum, a particular acquisition of control occurs within the legal language of the statute, there is simply no discretion in the minister to say either that it has not occurred or that he can ignore the fact that it has occurred.

Senator McElman: Mr. Chairman, the witness has made reference to checks which have been made in Washington and here in Canada at the governmental level. I wonder if he could give us some indication as to the extent or nature of those checks he speaks of having been made in Washington?

Mr. Macdonald: Yes. The principal check which we relied on was through an individual who until recently was a senior official in the administration and, I might say, one who was totally untouched by recent public events in the United States.

Senator Buckwold: You mean there was one?

Mr. Macdonald: I think there was at least one, senator. This individual is very knowledgeable. We had dealings with him over the years he was in the administration, so he knew the state of affairs. He checked for us on what appeared to be the current state of affairs. I do not want to be overdramatic, but his impression was that there was no progress being made on any of the outstanding, and

some fairly long outstanding, economic issues between the two countries.

Senator McElman: What you are telling us, in effect, is that you have the impression or opinion of one person in this respect. Is that correct?

Mr. Macdonald: That is not entirely right. This is consistent with other things that one has had occasion to know, and not as a result of a particular investigation, but simply on the basis of continuous dealings over the months and over the years, so that it simply conformed with a lot of other bits and pieces that arose in the normal course of doing business and not as a result of a particular investigation.

In fairness, I think this is a good question. We obviously have not gone down and done a one-month, in-depth investigation. Nonetheless, I personally am fairly confident that the description I have given is pretty accurate in the central issues that I have raised.

Senator Martin: This person is no longer with the government?

Mr. Macdonald: No, he is no longer with the government.

Senator Martin: He has nothing to do with the government?

Mr. Macdonald: He has nothing to do with the government; that is, he has nothing to do with the government on their side. I think he continues to have a good deal to do with the government from the side that I am on.

Senator Connolly: Was he a State Department official?

Mr. Macdonald: As it was a confidential discussion, I would not wish to say.

Senator Macnaughton: Mr. Chairman, is it correct to ask the witness whether his conversations were with businessmen only, and not with say, professionals or politicians?

Mr. Macdonald: It was with a highly professional man, if I may describe him without—

Senator Macnaughton: In the business field?

Mr. Macdonald: Mr. Chairman, you were asking a question about extraterritoriality, I think. I am not quite sure what the question was.

The Chairman: I am asking whether that is part of your complaint, that the scope of this bill is such that it attempts to reach out in a quasi jurisdictional way over operations that take place in the United States.

Mr. Macdonald: I do not think that that is primarily the complaint; although just within the last few hours we noticed one that we felt was genuinely extra territorial that does seem to us to meet even the distinction that I think Mr. Gualtieri tried to make, between genuine extraterritoriality and laws that he simply said had some extraterritorial effects. I think that was the distinction he was trying to make. But the one we discovered is the one that relates to the so-called criminal offence for failing to give notice of an actual investment in a Canadian business enterprise. Quite clearly, I think, in the cases where there might be someone in the United States who might acquire 5 per cent of General Motors stock on the New York Stock Exchange, that is certainly a transaction that occurs in the United States. On the assumption that 5 per

cent gives control, under our Act, that is a transaction which affects, among other things, a change of control of the Canadian General Motors. Now, it also creates a crime; and that crime would appear to be totally committed in the United States. That is, proceeding with an investment without having given notice to the Canadian minister is a crime under this statute, or at least a penal provision with potential criminal consequences. That would seem to be a pure case, by anyone's definition, of extraterritoriality.

We have not directed our attention, Mr. Chairman, to that particular problem in this statute. Rather, what we are saying, I think, is as to three of the transactions—namely, transactions that are purely internal, where there is no change in the ultimate control—that there is simply no reason, in terms of Canada's objectives as reflected in this bill, to deal with them at all, because the bill is concerned with genuine changes in control. So why is it dealing with changes that do not affect the ultimate control of the particular Canadian business enterprises?

In fact, I was interested to read Mr. Gualtieri's evidence in the House of Commons committee dealing with this bill where, when he supported the introduction of the change exempting statutory amalgamations, he made exactly the same point in respect of statutory amalgamations that we are making in respect of every form of re-organization. His position would have been more complete if he had applied the same reasoning to every technical method of re-organization rather than limiting his reasoning to only one method of re-organization.

So that on those three points, there may be extraterritoriality, but we are not resting our case on the ground of extraterritoriality. We are simply saying that it has nothing to do with what you are doing in this statute. It is just going to clutter up the operation and it is going to upset people, frankly, who find that they want to make a change in the organization of their Canadian companies or in the way in which they hold their world assets and they find that, although they are still in charge, they have become caught up in this screening process and somebody tries to extract some additional charge on the way through.

Now, there is the fourth case, which is a more difficult case in theory, although I think that practical, good sense ought to prevail instead of what would appear to be an over-theoretical approach. The fourth case is that in which, in fact, there is a transaction which takes place abroad in relation to a multinational company with businesses all over the world in which one of them is in Canada. We do not take issue, for the purposes of our discussion here today, with Mr. Gualtieri's position before your committee earlier that Canada, in the terms of this statute, has an interest in this change in control. What we do say is that, if the main object of the transaction does not relate to Canada and if the relative size of the Canadian business assets to the world assets involved in the transaction is small, then practical, good sense suggests that Canada does not have an important interest and does not have the opportunity of extracting significant benefits for Canada out of a transaction that is motivated primarily, if not entirely, by non-Canadian considerations.

We recognize that there could be cases where what is small to the foreign transaction may still be large in Canadian terms. If this is an anxiety—and I might say it is not our anxiety, but, then, we do not share all the anxieties that are reflected in this bill—we are saying, "Let's

accept the anxiety." In those circumstances, however, we suggest that the "significant benefit" test is not a realistic test where the transaction is primarily related to non-Canadian affairs.

Senator Connolly: Could we take an example of that, Mr. Macdonald? Let us say, for the sake of argument—I don't know if it is a fact or not—that General Motors of Canada is wholly owned by the parent corporation in the United States. What you are saying is that, if a transaction occurs on the New York Stock Exchange whereby a foreigner, a non-eligible person under the bill, acquires 5 per cent of that, strictly speaking this bill calls for a screening? is that a good example?

Mr. Macdonald: That is an excellent example. What we are saying is that, if you are still worried about that transaction—and I say we are not—if the government or Parliament is still worried about that transaction, the height of the worry, in realistic terms, ought to be that that transaction not give rise to a detriment of Canada.

It seems to me far too much to hope that a screening agency can bargain for a benefit to Canada in that kind of transaction. Our feeling is that the most that the screening agency could hope to do would be to ensure that there is no detriment to Canada, and that applying the "significant benefit" test right across the board to such a transaction does not make practical sense.

Senator Connolly: if you had the negative test, though, you would still have the screening, would you not?

Mr. Macdonald: You would still have the screening. Our personal recommendation is to forget about screening. There are going to be enough things to screen where you may have a chance of doing something constructive under the bill, without adding all these cases to screen where it is unlikely that you are going to achieve anything significant, and where you are going to alienate a lot of people who feel that what they are doing does not have very much to do with Canada, and that they should not be hung up in their general activities by a Canadian requirement that relates to a small part of the total transaction.

Senator Godfrey: If Senator Connolly—I just got the impression that he is suggesting that if some individual bought five per cent of General Motors stock on the New York Stock Exchange, there would be some necessity to screen, and see whether there was significant benefit to Canada; but surely that would not affect control in any way? It would be very easy to satisfy the onus, and it would not affect the situation of Canada in any way. it is only when there is actual control that it is changed, not the purchase of five per cent.

The Chairman: Well, Senator Godfrey, in any event, there is only a presumption of acquisition of control, which is rebuttable if you can show that it is not.

Senator Godfrey: Right.

The Chairman: Yes. Under the bill as it is.

Senator Godfrey: So it does not automatically mean you have got to show significant benefit.

Mr. Macdonald: But I think that was Senator Connolly's case—and who knows? I do not know how much the DuPont family has in General Motors, but it may not be very much more than five per cent, and there may be people who feel that they do in fact, in practical terms,

control General Motors. I agree it is rebuttable, and that whole area of *de facto* control is not one that we have chosen to get into today, although I think it is far less clear cut than one might imagine from reading the surface of the statute.

Senator Connolly: The point that I was directing my attention to, Mr. Chairman, was a very simple and narrow one. it was not a question of actual control, or its rebuttability, if that is a good word. It is just a question of whether or not, in a case like that, the transaction was screenable in Canada; and I think the witness said that unquestionably it would be screenable.

The Chairman: Oh, yes.

Senator Godfrey: As to whether there is a change in control.

Senator Connolly: There is a presumption that once you acquire five per cent, under the bill, you do have control. Now, you have to go through the screening process to find out whether in fact you rebut the presumption.

Senator Godfrey: You mentioned about significant benefit, but you do not have to reach the significant benefit stage if you show that in fact there is no change of—

Mr. Macdonald: I think, for the purposes of the point that we are trying to make here today, the particular case that Senator Connolly raises is at the far end of the spectrum, and there may be in there some of the doubts that Senator Godfrey has raised as to whether it would in fact ever reach the significant benefit stage; but these doubts do not apply where there is a merger, for example, of two non-Canadian companies in which 95 per cent of the assets were non-Canadian. The fact that five per cent of the assets were Canadian would still mean quite clearly, in that case—because there would be no question of this five per cent rebuttable presumption—that there would be, within the terms of the act, a clear change of control; and in those cases, Canada, under the act, would be bargaining for significant benefit in a transaction that was simply not directed to Canada at all, except in the most incidental way.

Senator Godfrey: Are you suggesting that if there is an amalgamation between General Motors and Chrysler, and because the Canadian General Motors and Canadian Chrysler are so small in the overall picture of those two companies, that it is not of interest to Canada?

Mr. Macdonald: Well, I said two things, senator. The first is that in most of these cases one happens to pick the one in which quite clearly the effects in Canada might be significant. There will be more cases numerically where that is not, in fact, so. But we have a double position. We have said that where it is a small part of the world transaction, our preference, at least at this stage, in the introduction of a new statute involving a new screening agency with plenty to do in areas that are primarily and clearly concerned with change of control in Canadian business enterprise for the sake of getting that change, would be to consider that it would be better to forget these transactions. But then we went on to say that we recognize that where a situation might be small in the world context, but still large in Canada, there is an interest in terms of the purposes of this bill that Canada has as to that particular change of control.

What we have said is that if we insist on asserting that interest in these foreign transactions, it ought to be limited to seeing that there is no detriment to Canada; that the "significant benefit" test just does not seem to be a practical, realistic test to apply to a transaction that primarily has nothing to do with Canada.

Senator Aird: Let us stay with Senator Connolly's example, and let us presume not an amalgamation between General Motors and Chrysler, but let us presume, as is not improbable, that there might be a large purchase of, say, EXXON or General Motors by an Arab country or a sheikdom, or a consortium of sheikdoms—because those dollars must end up some place, so let us assume that they will end up on the New York Stock Exchange. Would you then carry your argument still further and say that that is something that Canada should not be concerned about at the present time? Would you weaken your argument about "significant benefit," or would you strengthen your argument about detriment? Do you think the same two tests would still apply?

Mr. Macdonald: I think what you are implying has to do with a situation where a consortium of sheiks took over control or got themselves into a controlling position in respect of a major United States multinational company with interests in Canada. I think you are implying that that is probably a detriment, of itself. If that is your implication, then presumably, on our suggested test to ensure that there should be no detriment to Canada, you would rule the sheiks out in that transaction. But if one takes away the *ad hominem* aspect of your question and simply says that somebody whom we know nothing about or what they might want to do acquires control of an American multinational company, then do we need to be concerned, not theoretically but in the real practical world, or is it practical for us to be concerned with ensuring that anything more than no harm comes to Canada in what is essentially a world transaction?

Senator Cook: Staying with the example of the sheiks, don't you think that the U.S.A. would be concerned before we would be?

Senator Aird: Certainly, I think the United States would be concerned, but I do not think Mr. Macdonald could argue that the human element or the *ad hominem* element could be taken out of the proposition that he is presenting because I think that is the argument that we are concerned about and what the bill is concerned about.

Mr. Macdonald: I did not say that it should be taken out of the consideration. I simply said that the consideration, including the so-called *ad hominem* element, ought to be directed to the detriment test, rather than the benefit test, in that limited area, namely the area in which the Canadian element is a small part of the world transaction.

The Chairman: We have had representations on that point, Mr. Macdonald.

Senator Connolly: Mr. Macdonald, I am endeavouring to visualize a situation in which a 5 per cent acquisition, say, of General Motors in the circumstances we have been discussing does take place abroad, in New York. How does this act reach down there and affect that?

Mr. Macdonald: The act does not affect the transaction in New York as a transaction. It does two things. The first is that if the notice is not given, then it creates an offence. How that offence might be enforced against a person

living abroad may be another question. The second thing it does, however—and, again, there may be very serious constitutional questions as to whether in fact this is a valid exercise of federal power—is give or purport to give the courts the power to force a sale of the Canadian enterprise. So it does not affect the transaction; it is simply that the transaction has an unpleasant consequence for the parties insofar as the Canadian business is concerned.

The Chairman: You mean it might force sale of the 5 per cent of the shares?

Mr. Macdonald: No, it would not. It would force a disposition on the Canadian business enterprise.

Senator Connolly: I do not know whether that is right.

Mr. Macdonald: Mr. Weir is more technically competent, as I am sure you are now beginning to guess, than I.

Mr. E. K. Weir, Law Firm of McMillan, Binch, of Toronto: I will endeavour to answer the technical aspects of your question as to how the act comes into play in such circumstances. It is a technical provision of the act which says that the business which is carried on by the Canadian company, which is the Canadian business enterprise, is deemed to be carried on by the parent U.S. company. Accordingly, if 5 per cent of the outstanding shares of the U.S. company, or 10 per cent, or 15 or whatever amount, are bought, if that acquisition of shares constitutes an acquisition of control of the U.S. company, then under the technical provisions of the act that is an acquisition of control of the Canadian business enterprise.

Senator Connolly: That is right.

Mr. Weir: Because, as I said, the Canadian business enterprise is deemed to be carried on by the U.S. company.

Senator Connolly: That is right.

Mr. Weir: And, accordingly, the acquirer of those shares of the U.S. company is required, first, to give notice to the screening agency of that proposed investment, failing which he commits an offence under the act.

Senator Connolly: This may be a straw man but, you know, one day perhaps 10 per cent might be acquired and another day 6 per cent of that might be held by the first buyer. My thought, however, is that the Canadian authorities may never know of such transactions. Technically, it might constitute an offence or a violation of the act, but how could it possibly be followed, and what are the consequences if that is not done?

Mr. Weir: I think your point is well taken. In a great many cases there will presumably be a technical violation of the act which is never discovered; but, nevertheless, the act has been violated. Of course, if this comes to the attention of the minister, even later on down the line, a year later, he has a right at that time to give notice to that person requiring that person to give notice and to then screen the transaction; and if he concludes that the transaction did not result in significant benefit to Canada, then all the results of the act necessarily follow.

Mr. Macdonald: Senator Connolly, I think there are two things to bear in mind. One is that ignorance of this law may, of course, be bliss for many people, in that they may happily continue to do the things you describe and no one

may discover them. The problem is that if you once become aware of it, and you become aware of the consequences, namely, a forced sale of your Canadian business, then it becomes a pretty heavy decision for anyone involved in making that decision to decide that you are going to ignore the existence of this and run the risk of, in effect, having your business sold under forced sale conditions.

The second thing, in which I think you were perhaps involved in your question, is that if the transaction takes place outside Canada, then obviously Canada cannot effectively render that transaction nugatory, to use the language of the act; but there is a specific provision, clause 20(3), that deals with the situation where the shares or property are held by a person outside Canada. That provides that if there is non-compliance in those circumstances, then the court may, by order, vest the shares or property in a trustee named by it:

who may thereupon, notwithstanding any other Act or law, do all such things . . .

and so on and so forth:

to give effect to the order of the court, and any proceeds of disposition . . . shall first be applied to . . . expenses and paid—

Senator Connolly: You are saying that is the sanction?

Mr. Macdonald: That is the sanction. The sanction is that the Canadian business enterprise is in Canada and they can get at it through this section.

Senator Godfrey: How can the United States complain extraterritorially, in view of past history, for instance, that CIL had to be split up between CIL and Dupont because of some antitrust suit in the United States?

Mr. Macdonald: When you ask, "How can they complain?" You really mean, "How consistent is their complaint with things they have done?" I suppose we may be in an identical position. But that does not seem to have very much effect on the complaints that people make in their lives, the fact that they may have done something comparable to this. I think the question is essentially this—

The Chairman: You mean consistency is not necessarily a virtue in international relations?

Mr. Macdonald: It is not necessarily a virtue and it is not necessarily a fault by any of the participants, and I do not think we are particularly wise if we think that we are exceptionally pure in that respect.

I think that what we ought to be asking ourselves is not whether we can score some point of that kind in our discussions or dealings with the United States, because there are some very real issues between Canada and the United States that are not going to be resolved on the basis of that kind of exchange. There are real interests in conflict, if one can put it that way. There are going to be very difficult issues under the very best of circumstances to work out successfully. So we ought to be looking at this, and the particular features of the act that we have been discussing this morning, and ask ourselves whether it makes sense, from our point of view, whether we are going to get anything out of reaching this far, relative to the problems that we create for ourselves.

Quite frankly, we do not think that we are going to get anything significant at all out of reaching into all of these internal reorganization areas. All we are going to do is clutter up the screening process. We are going to add a great many transactions to it to no purpose.

As to the final category, I simply think that practical realism ought to say to us, "Why add this item of potential abrasion into a difficult situation in which the difficulties are real, unless we can see something for us of a significant character coming out of it?"

We are suggesting that there is nothing for us of a significant character that will come out of it. The maximum we could hope to achieve would be to see that there are no detriments from these multinational transactions.

The Chairman: Perhaps that is a benefit in itself.

Mr. Macdonald: That would be a benefit in that situation, Mr. Chairman.

Senator Buckwold: Mr. Chairman, may I ask the witness two questions?

The Chairman: Yes.

Senator Buckwold: You have given us the four practical types of cases. How would the act apply in relation to item (1), which covers internal reorganizations inside Canada where no control changes?

Mr. Macdonald: Well, you may have two Canadian businesses carried on in subsidiary "A" and subsidiary "B", one of which was incorporated under Canadian federal jurisdiction and one under Ontario jurisdiction, and it would apply if, for any one of a number of reasons, you decided that you would like to put these two businesses under the same corporate roof. If both companies had been incorporated under federal jurisdiction, then there is already provision—as a result of an amendment which your committee, in fact, recommended and made subsequent to the recommendation—whereby a statutory amalgamation not involving any change in ultimate control could take place free of the act. In other words, it would be outside the act. You cannot merge in Ontario a federal company by way of statutory amalgamation, so in order to achieve exactly the same result you have to transfer the assets from subsidiary "B" to subsidiary "A", and that transfer of assets is an acquisition by subsidiary "A" which is a non-eligible person or business. An alternative way of doing exactly the same thing might be to sell the shares of subsidiary "B" to subsidiary "A" so that it could then be wound up. Each of those transactions would be screenable.

What I did not get an opportunity to point out, as the questions were put, is that in our view the reason we are in this particular box is not a policy reason but a drafting reason. It results from the fact that the draftsmen have not distinguished between changes of control that are internal, under the umbrella of the same ultimate owner, and changes of control that are external. Having failed to make that distinction, all these situations which we have been describing simply fall automatically, except that then they recognized one of the methods of reorganizing your affairs, namely, the statutory amalgamation method, and they made that particular method all right as long as there was no ultimate change in control. They failed to recognize and make all right the other generally recognized, and perhaps in many cases only available, methods for achieving precisely the same result.

Senator Buckwold: I put that question to you for my own information, really. I was trying to figure out how this would be handled. I am perhaps not quite as concerned about it as you are. I have the feeling that if it did get before the Board it would be treated under the statutory regulation that has been laid down in respect of Canadian corporations as against provincial corporations.

Item (3) does worry me a little bit. It states:

Carrying on or expanding existing businesses or launching a new related business of a corporate group through a different corporation, again where no control changes;—

If we adopted your recommendation here and allowed that without any control, we would be creating a glaring loophole in the act and a means of evading the objectives of the act.

I can see many divisions being created. Companies comprised of many divisions could bring in a new competitive force to perhaps squeeze out a Canadian competitor. This could be the result if you allow a subsidiary company to come in and be considered under the act as if it was the original business in Canada, notwithstanding that there would be no change in control. I do not know whether I am making myself clear. I could give you a good many illustrations of what could happen if you leave that wide open.

Senator Beaubien: It is wide open now. Is it happening now?

Senator Buckwold: It could happen.

Mr. Macdonald: I am not sure. We would have to go over it. I am not sure whether I understand your point or whether you understand our point. What we are saying—and perhaps you could then say where you see that this could create a problem—is that if company “A” is engaged in the wholesale grocery business and it decides that it wants to expand that wholesale grocery business—so there is no question of it being a new and unrelated business, it is an expansion of the existing business—as the bill stands now, if it expands that business in subsidiary “A”, there is no problem. If it expands the same business, under the same control, in a new subsidiary “B”, it is regarded as a new unrelated business and becomes screenable.

That does not make any obvious sense to me, nor is it clear to me how permitting that involves any loophole. Nothing can happen. It is the same business expanded simply in other corporate forms.

Senator Buckwold: Let us take that illustration and carry on. They decide to open an expansion to company “A”. Another company, controlled by the same foreign owner, decides to move in as company “B”, keeping in mind that company “A” still operates. Then you have an expansion, but instead of being one company it will be two. The reasons for this could be to the detriment of Canadian industry. It could be done deliberately to make it difficult for a Canadian competitor, and a competitor could be put out of business. I say these are the kinds of things that happen, rather than have just an original company expand itself normally. I can see a division there, a whole series of different things that I think, if we carried it to the ultimate, would evade the objectives of the bill. It might. I am not suggesting it would, but it would leave a loophole there to do it.

Mr. Macdonald: Yes. If I may say so, I think that you are implicitly expanding the bill by your particular description, as I understand the bill, if there is no intention for there to be government surveillance of the expansion of an existing business.

Now, if there is not going to be government surveillance of that particular activity as of now, then all kinds of things that you or I might not like may happen as a result of that expansion. But that has got nothing to do with this particular statute. If there are other things than the expansion of an existing business that one is worried about, then it seems to me that we ought to be directing our attention to the specific things that you are worrying about and say what is an appropriate way of dealing with them—rather than simply using a rather artificial and, to us may be more than to you, an unreal distinction, to provide the occasion for really, in effect, expanding this bill beyond the genuine stated purposes that it has had up to this point.

Senator Buckwold: Obviously, you and I do not think the same on that particular point.

Senator Connolly: Mr. Macdonald, I wonder if I am wrong. It seemed to me, when we were discussing this matter the other day, that paragraph 3(3)(e) provides an exception to the original draft which covers the kind of situation about which you are complaining. I read the words of the exception as I find them in the bill as passed by the House of Commons, on page 9:

... except in the case of an amalgamation that is part of a corporate reorganization that is carried out for a purpose not related to the provisions of this Act and that results in the amalgamated corporation being controlled by the same person or group of persons that controlled each of the amalgamating corporations, ...

Are you aware of the fact that that amendment was made?

Mr. Macdonald: Yes.

Senator Connolly: I see.

Mr. Macdonald: I mentioned earlier that the language in the latter part of paragraph (e), you are quite right, is exactly the language that we have been using throughout the discussion. But it is restricted, at the beginning of paragraph (e), to one particular method of corporate reorganization, namely, the amalgamation of two corporations into one corporation.

Senator Connolly: You mean to say that that does not cover the acquisition of assets?

Mr. Macdonald: It does not cover the transfer of assets or the transfer of shares. If that had gone on to include the transfer of assets or the transfer of shares as part of the corporate reorganization in which there is no change in control, then you would wipe out—

Senator Connolly: It is a very technical, narrow point.

Mr. Macdonald: Three of the four points we are making are very technical, and they are very narrow in that, as I said, they arise out of what we have to regard as a particular technique of legal drafting, because the policy seems to have been accepted as to one technical method of reorganization and it is not apparent to us what the

policy distinction is between one method, amalgamation, and other methods, transfers of assets or transfers of shares.

Senator Godfrey: It surely can be argued, though, that it is not confined to a statutory—

Mr. Macdonald: It may be able to be argued, but I would not feel too cheerful when you look at it is “to continue”. This is pretty technical corporation law language. “To continue the amalgamating corporations as one corporation”: that is pretty limited stuff, I think you would agree.

Senator Godfrey: Yes.

The Chairman: Are there any other questions?

Senator Connolly: No.

The Chairman: Is there anything further you want to submit, Mr. Macdonald?

Mr. Macdonald: Mr. Chairman, I think what I would simply like to say in conclusion is this: If all or any of the points which we have made commend themselves to your committee and you feel that, given the position in relation to the other place, you are not anxious to make the amendments now—perhaps in the hope that they might be made at a later date, I would like to suggest to your committee: first, that we are not overstating the importance of doing something now rather than later; and, second, and this is in our technical memorandum, a compromise that would provide a practical way of dealing with these situations would be to provide for the separate proclamation of the extension of the act to these particular types of transactions.

Frankly, in our view the chances of extending the act to these transactions would be fairly slim in practice; but this would mean that the act would go through as it is and it would simply mean that, if the government became concerned that it was not as clear-cut, as we have suggested, they would then be in a position to protect themselves by proclaiming the provisions.

The Chairman: Mr. Macdonald, an amendment to the act would be required to do that, would it not?

Mr. Macdonald: Yes, sir, it would. It would not be an amendment to the substance, the substance would all be there; but I agree that it would require going back to the House of Commons, as I understand the procedure.

Senator Beaubien: We could not do anything with regulations there? We cannot do anything with regulations?

The Chairman: No, they operate in a pretty narrow area, and they really say that you can have regulations if in the substance of the bill there is a provision which provides for dealing with a matter by regulation. It is not drawn, generally as you find some of the provisions with respect to regulations in other legislation. I would think the guidelines, notwithstanding Mr. Macdonald's disagreement with me, would represent an area where the minister, who is required to make the assessment that there is an acquisition of control and whether or not the matter is likely to be of significant benefit, can, in effect, by guidelines, it seems to me, interpret what is acquisition of control. Now, that is just expressing my own view on it.

Senator Connolly: Well, following it up, Mr. Chairman, if the Department of Justice, to which the minister has to look for his legal advice, tells him that he is not contrav-

ening the act, in the sense that Mr. Macdonald suggested, then the minister has this assurance from the Department of Justice, that they may tell him, “Some day you had better change that language, but in the meantime, you go on with your guidelines, and include the word ‘amalgamation’ in the context of 3(3)(e), sales of shares,” in this case, “or sales of assets.”

The Chairman: No, senator. The guidelines could spell out an interpretation of “acquisiton of control”—

Senator Connolly: Yes.

The Chairman: —by interpretation. If it does not hold up, as you will see later in the development of the evidence here, you can always get to the courts.

Well, are there no other questions? Thank you very much, Mr. Macdonald.

Mr. Macdonald: Thank you very much, Mr. Chairman and gentlemen.

The Chairman: We will take into consideration what you have said.

Now, honourable senators, we have the minister here, and Mr. Gibson, from the Department of Justice, is here with him, together with Mr. Lazar from the minister's department.

I do not think it is necessary, but I will indicate that the man immediately on my right is the minister, Mr. Gillespie. Next to him is Mr. Lazar, from the minister's department; and next to him is Mr. Gibson, from the Department of Justice, who has already, on a number of occasions, been before us in this matter, and in relation to this bill, as a witness.

Now, Mr. Minister, the usual procedure is to have an opening statement. Do you have one?

The Honourable A. W. Gillespie, Minister of Industry, Trade and Commerce: Yes, Mr. Chairman.

I would like to say how pleased I am to be before such a distinguished committee, in such an historic room. I think this is a very historic occasion on which we are dealing with this bill, which is the first general application of a bill towards the whole issue of foreign control in Canada.

I would like, by way of introduction, to say a few things. I would like to say, first, that I am very much aware of, and grateful for, the constructive work your committee has already done on this bill at its earlier hearings. Your committee's report, last July, included many thoughtful proposals, and as you are now aware, I am sure, many of your proposed amendments were adopted. I want to commend you for your efforts, and for the quality of your contribution. I think we now have a better bill.

Secondly, I want to say that I think there is a good deal of common ground between us, that is, between members of both houses of Parliament and members of all parties. I think that common ground is extensive; it is common ground both as to objectives, and, very largely, as to methods proposed in the bill.

I would like to emphasize the common ground as regards objectives.

First of all, they are to secure for Canada and Canadians—and I am referring now to your report of last July, which clearly and firmly supported the bill's objectives—the maximum possible economic benefit from foreign

investment in Canada; and, secondly, to ensure that Canadians maintain effective control over their economic environment.

At the same time, your committee expressed concern that the bill might reduce foreign direct investment to a level below that which was needed to maintain Canada's economic growth.

Let me explain why I do not share this concern, or why, on the contrary, I am confident that Canada will continue to attract the foreign direct investment it needs.

I think that perhaps we could start with the investment outlook for this coming year. I reported a short while ago about the capital spending plans of 200 of the largest firms in Canada. Those capital spending plans indicated that business investment should be up about 21 per cent in 1974, and in manufacturing by a very much larger amount, as high as 46 per cent.

Now, it is true that events in the Middle East have raised some uncertainties, but I think there is an underlying fact that the survey revealed, and that seems to be relatively independent of short-term uncertainties. This underlying fact, which comes out very strongly in the survey, is that both Canadian and foreign-controlled firms in Canada want to invest a sharply rising amount of capital in this country. This is true for the longer term as well as for the immediate years ahead. For the next five years, for example, the spending plans of these firms are sharply up, and that survey was undertaken at a time when this bill was well advanced through the House of Commons.

I suggest to you that, far from facing any danger of an insufficiency of foreign direct investment, Canada may actually face the prospect of an excess of total direct investment, both Canadian and foreign. I am not predicting that, but I am suggesting to you that such a conclusion could reasonably be drawn from the stated intentions of the business community itself.

I think there are a number of reasons for this possible surge in capital spending in Canada. I would like to mention a few. Perhaps the most obvious one to us all is the increasing shortage of natural resources elsewhere, while we have extensive resources that are making it more and more attractive to a world that is hungry for resources. Secondly, many countries—and here I think Germany is a good example—are suffering from an increasing shortage of skilled labour, while Canada has a large, rapidly growing and highly educated skilled labour force. In addition to that, the federal government, in lengthening the list of measures designed to encourage investment in Canada, primarily measures to promote the growth of strong Canadian-controlled firms but also measures to encourage investment more generally in Canada, are clearly making some contribution to the strong recent performance and future outlook. Here again I underlined the production of the corporate income tax rate for manufacturing and processing industry.

In any event, we appear to be moving to a period in our development when we may be in a position to pick and choose. In fact, we may have to pick and choose among proposed foreign direct investments if we are to avoid an inflationary excess of capital spending in Canada. Bill C-132, a foreign investment review process, offers the most effective and practical means of exercising selectivity towards foreign direct investment.

That brings me to the test of "significant benefit." I suggest to you that the desired selectivity, the necessary selectivity, requires the test of "significant benefit," because a weaker test would not provide an adequate basis for exercising sufficient selectivity.

As I noted earlier, your report last July supported the objective of securing for Canada and Canadians the maximum possible economic benefit from foreign direct investment. Such maximum benefit could not be secured, in my view and in the government's view, by means of a weaker test than that of "significant benefit to Canada." In other words, we want to select the best from among the very many foreign investment proposals that are put to us, and we want to have a bargaining authority—and I have underlined that phrase—to attempt to upgrade the quality of even some of those proposed foreign investments that do offer us greater benefits. For these two purposes only the test of "significant benefit" will suffice.

Your committee, Mr. Chairman, did, I think, implicitly acknowledge the "significant benefit" test to be appropriate as a general test. Your committee did question, however, whether this test would be appropriate in all possible circumstances. I would be glad to discuss the specific cases which were of concern to you later in the day, if that is your wish.

Let me turn now to the few issues which seem to be of relatively greatest concern to your committee. Your report stated, for example, that the most important area which requires further clarification relates to the extent to which the provinces will be able to participate in the review process. Perhaps I could begin with this issue.

First, let us be clear as to what is not a purpose of the bill. It is not a purpose of the bill to deprive less developed regions of investment they need for accelerating their economic development. The federal government is just as anxious as the less developed provinces to accelerate their economic growth and reduce regional disparities. That is the whole point of having a federal department and program to assist regional economic expansion. Nor is there any desire to assert that the federal government knows better than the provincial governments what is best for each province. No, the issue, I submit, is something quite different. It is how to reduce unnecessary and wasteful competition among provinces for foreign investment. Often the economically weaker provinces compete with each other to attract investment. They tend to offer excessive incentives and to settle for less than the investor can perhaps be persuaded to offer. The question, then, is how to protect their interests and strengthen their hands.

I submit that to achieve these objectives the review process must have, and must be seen by the foreign investor to have, bargaining power on behalf of the entire country, otherwise the foreign investor can play one province off against another; and, as I have indicated, I think the problem is greatest amongst the economically weaker provinces.

I submit that the only solution is a national foreign investment policy to reduce competition among provinces and to present the strongest possible bargaining front on behalf of each province as well as on behalf of the country as a whole. The federal government is just as anxious as the provinces to ensure effective provincial participation in the review process. The federal government needs effective provincial input in order to obtain from the

foreign investor the best possible deals for the regions and the country.

We need and we want an effective provincial voice, the most knowledgeable and supportive position possible, in order to deal most effectively with the foreign investor. This is another matter which I stand ready to discuss with you in detail.

Let me now, Mr. Chairman, move on to say a word about your proposals on appeals. One or your suggestions was that there should be appeals from advance binding rulings. The other related to appeals on the recommendation of the minister to the Governor in Council. I have already had an opportunity to discuss this issue with some of you. On the latter matter, the legal advice provided to me by the Department of Justice is that provision for judicial review is contained in the Federal Court Act. These rulings, of course, are binding only on the minister, not on the applicant. There is no basis for appeals from advance rulings under the Income Tax Act, for example, which is the only other provision in Canadian law which I am aware of which provides for such a ruling. However, this is a point which, I am sure, some of you will want to go into later with me and with my officials in our discussion. Perhaps we can deal with it then.

Real estate. This is another important area. Your committee recommended the exemption of businesses whose sole activity is the ownership, development, management or operation of real estate.

I was unable to go along with this because it is important that the agency be able to review the acquisition or real estate businesses, including, for instance, any takeover of enterprises such as the Campeau Corporation and Place Ville Marie.

However, it is not the intention to screen the acquisition of property as such. I want to make that distinction. It is not the intention to screen the acquisition of property as such. In the administration of the act, it is my intention to recognize the essential differences between business and property.

We have every incentive to do so if the agency is to avoid being swamped with applications by persons who are in doubt. Perhaps you will want to examine this point in our discussion later.

Mr. Chairman, as your committee proposed, the bill was amended to make advance rulings binding. Binding rulings will be provided in the concept of a non-eligible person and unrelated business.

Your report also proposed that binding advance rulings be available on all other questions arising under the act except the assessment criteria. My fear is that such a provision would result in requests for such rulings in a great many cases; that, in effect, the government would become the legal adviser on business. Frankly, I think this is a job for solicitors in the private sector, or we may have more lawyers in Ottawa than we have in Toronto, Montreal and Vancouver combined.

Senator Buckwold: Don't we already?

Hon. Mr. Gillespie: Sometimes, senator, I think we have.

There are several areas that I would just like to identify with the areas where you had proposed amendments.

The second area is with respect to the statutory period provided for in clause 10, which had been 90 days, and

your committee recommended that it be reduced. It has been cut to 60 days. This is about the shortest period which I think would be prudent to state as the time limit; although I may say that I expect many applications to be processed in less time.

As your committee proposed, an amendment to paragraph 3(3) has been adopted, so as to exempt amalgamations of corporations, all of which are controlled by the same personal group.

In line with your proposal concerning foreclosures, paragraph 3(6)(d.2) has been amended so that acquisition of control is not considered to have taken place by reason only of a lender realizing on his assets as a result of a default by the borrower.

Another area in which your committee proposed an amendment is where a person already has control of a business. Further acquisition by the same person of shares in the same business should not be considered acquisition of control.

This has always been implicit in the bill, that a person already in control of a business cannot make an acquisition of control of that business. In any event, an amendment has been made to paragraph 3(3)(d) which may help clarify this point.

Your committee was concerned that the mere receipt by a shareholder of rights to acquire additional shares in the same company—that all shareholders in the same class have received the same rights in proportion to their respective holdings—should not give rise to any new presumption about whether the investor has or has not acquired control of that company. An amendment to paragraph 3(6)(c) was introduced to meet this useful suggestion.

Mr. Chairman, I think I have gone into this enough perhaps, and into many details and technicalities. Let me try to summarize what I have been saying.

The essence of what I have been saying is that there is a great deal of common ground between us. We are in agreement on the central purposes of the bill. We are in agreement with respect to the "significant benefit" test as a general test. Your concerns about an adequate provincial voice are shared by the government. In substance, I think, our positions on this matter are now very close.

In respect of quite a variety of other concerns expressed by your committee there is no real difference between us over substance. In some cases, it is true, there may be differences in legal interpretations as to whether the bill does or does not satisfy the substance of your concerns. I assure you that I shall make every effort to clarify these legal questions and resolve any uncertainties.

May I once again thank the members of this committee for their valuable contribution to this very important bill?

The Chairman: Thank you, Mr. Minister.

Honourable senators, ordinarily the meeting would now be open for questions from honourable senators to the minister. However, I think the question of appeal, which was a very important question in the discussion in the Senate, should be elaborated upon by the legal adviser to the minister. The minister does not have to make legal decisions; he consults the Department of Justice in this respect.

Mr. Gibson is here, and I would assume that the committee would like to have some development of his views with respect to the right of appeal that exists in the law—not in this bill, but in the law—at the present time, because the Senate committee, in its report made prior to the bill coming to the Senate, outlined some procedures for appeal. Those procedures outlined our concept of the form or method of appeal that should be incorporated in the bill.

From what Mr. Gibson may have to say, however, it will appear that there is a right of appeal existing apart from this bill in the Federal Court Act which, in essence, might be said to be broader in its scope than the provisions for such appeal which we recommended. For that reason, perhaps it will become more attractive to us to say that the right of appeal is already recognized in the existing laws, that it is broader and, therefore, we should go for it instead of the design for appeal which we provided in our report.

Mr. Gibson, are you ready to hold forth?

Mr. F. E. Gibson, Director of Legislation Section, Department of Justice: Yes, Mr. Chairman.

Senator Connolly: Mr. Gibson, you are from the Department of Justice?

Mr. Gibson: Yes, senator, I am.

Senator Connolly: We knew that, but we should have it on the record.

Mr. Gibson: My position in the department is Director of the Legislation Section.

Mr. Chairman, in an effort to minimize the complexity of this subject, if I may, I will talk only in terms of the results which, in my opinion, would flow in the case of a proposed acquisition of a Canadian business enterprise rather than also in terms of the establishment of a new business. I submit that my comments, with appropriate modifications, would apply equally to a proposal to establish a new business.

Where a person, corporation or group of persons contemplate the acquisition or control of a business, there are three major questions with which that person, corporation or group is faced under the terms of this bill. They are as follows:

1. Is the person, corporation or group a non-eligible person, or a group that includes a non-eligible person?
2. Is the transaction contemplated an acquisition of control?
3. Is the business in question a Canadian business enterprise?

On any one or more of these questions there is room for substantial and real disagreement between the minister and his advisers, and the proposed acquirer.

Where such disagreement exists and cannot be resolved by discussion, there are, in my opinion, at least two means by which the dispute can be judicially determined before the acquisition takes place and thus before the proposed acquirer becomes so deeply committed to the transaction that the determination is too late to be of any real use to them.

This is a point I would like to emphasize. In our opinion, it is desirable that, whatever avenue for judicial review is

open, it should be available at the earliest moment in relation to the particular transaction in contemplation.

The first of these routes might be summarized as follows. Where the proposed acquirer is firmly of the view that the act does not apply to him, he could, and indeed he would be expected to, simply fail to give formal notice of the proposed acquisition as contemplated by subclause 8(1). In those circumstances, the minister, if he is equally determined that the proposed acquisition does fall within the purview of the bill, could be in a position to issue a demand pursuant to subclause 8(3). That demand would require a proposed acquirer to file information relating to the acquisition with the agency. Section 18 of the Federal Court Act would then provide authority for the proposed acquirer to apply to the Trial Division of the Federal Court for a declaration that the minister lacked authority to issue the notice and, additionally, for an injunction restraining the minister from proceeding further under the provisions of the bill. On such an application, the issue before the court would be whether the minister had reasonable and probable grounds for believing that the proposed acquirer was a non-eligible person, that the proposed acquisition was an acquisition of control and, further, that the proposed acquisition was of a Canadian business enterprise. Those are the three questions I referred to earlier.

If the proposed acquirer decided not to follow this route of initiating judicial review himself and at the same time decided not to respond to the minister's demand for information, the most meaningful remedy then available to the minister, in the circumstances, would be an application for an injunction under the terms of clause 19 of the bill, to prevent the proposed acquirer from proceeding with the acquisition without review. If the minister decided to seek this remedy, it would be necessary for him to establish that the proposed acquirer was a non-eligible person, that the proposed acquisition was an acquisition of control, and that it was, additionally, an acquisition of control of a Canadian business enterprise. Proof of these matters would be a condition precedent to the court having authority to grant the requested injunction.

In each of these situations which I have described above, one of the issues determinable by the court would be the status of the proposed acquirer as an eligible or a non-eligible person. If the minister had given an advance opinion on that question under the terms of clause 4 of the bill, as he is entitled to do, the proposed acquirer would have remained perfectly free to proceed through the steps outlined above leading to judicial determination of that question—and, in fact, a judicial review of the minister's advance opinion.

Senator Connolly: Would that opinion be given by way of letter, or by way of an order?

Mr. Gibson: My recollection is that it would be informal, although it would be in writing, senator.

Senator Connolly: It could form the basis of an application to the court?

Mr. Gibson: It certainly would be one of the elements of evidence that would be before the court, in such an application.

An additional circumstance exists in which a proposed acquirer could obtain judicial review of the minister's activity under the terms of the bill. If, during the course of examining the circumstances surrounding a proposed

acquisition, the minister failed to comply with the requirements placed upon him by the statute, such as those relating to the giving of notice and the provision of an opportunity to be heard, a remedy would again lie in section 18 of the Federal Court Act on the initiative of the proposed acquirer.

In substance and in summary, Mr. chairman, the nature of the judicial reliefs which I have referred to, or opportunities for judicial review, is summary; it also provides the opportunity for the determination of the major issues in any proposed acquisition, other than the question of "significant benefit to Canada," at the earliest possible stage in the proceedings.

The Chairman: Mr. Minister, Mr. Gibson has explained the appeal provisions that exist in clause 18, particularly the Federal Court Act. I was wondering if the minister would make any comment on the situation which might arise—after all, lawyers give opinions but sometimes the courts do not follow all the opinions—if, in the process of attempting to make use of clause 18, the court decided it did not have jurisdiction? What position would you take in those circumstances, in view of Mr. Gibson's statement, Mr. Minister?

Hon. Mr. Gillespie: I would probably seek legal advice first, Mr. Chairman. I would want to get the advice of the Department of Justice. I do not hold myself out as an expert when it comes to understanding legal opinion, but as I understand the position, clause 18 would provide for the review that you seek. In the event that experience indicated that the opportunities for that review were not there, or that that clause did not apply, then I would seek appropriate measures, or recommend to my colleagues that they take appropriate action to ensure such review.

The Chairman: Having gone over the important headings which were discussed in the Senate and the more important headings which were developed in the recommendations of the committee, I should think on this phase of the matter the meeting is open for questions, if there are any questions you want to ask the minister.

Senator McElman: Mr. Chairman, may I ask Mr. Gibson whether the access to appeal he has described, which would be available to the proposed acquirer, would be equally available to the province directly concerned, or whether it would be restricted to the acquirer?

Mr. Gibson: Mr. Chairman, I doubt that a province could establish to the satisfaction of the court the interest that would allow the court to entertain an application on its behalf under clause 18, in the circumstances I have described. I do not believe that the court would entertain an application under that clause from a person other than a party to the proposed acquisition.

Senator Buckwold: I should like to question the minister on a matter which concerns those of us who come from the less affluent areas of the country. I am from the booming province of Saskatchewan, which, I do not have to tell you, is desperately anxious to diversify its economy. The major concern in our area is your determination of "significant benefit" insofar as the provincial relationship is concerned.

First, I would want to be really assured that provincial interests are considered as fairly determining factors in looking at this overall "significant benefit", which, after all, is listed as only one of a group of factors.

I should like to ask the minister, then, how important the regional aspect is. If strong representations were made by a province for a given new industry, either foreign-controlled or the expansion of an already established industry in a non-related field, in his opinion, would provincial requests be a major factor in the decision?

Hon. Mr. Gillespie: I think provincial representations would be a very important factor, and clearly that is anticipated in the bill, senator. The earlier bill was amended to provide expressly, in the new bill, for the stated economic and industrial objectives of the provinces. Clearly, I think, there are these requirements in the bill, which requirements will ensure that a provincial representation is placed before Cabinet by the minister in his recommendations, whether it be to allow or disallow. That right, that obligation, is built into the bill, as far as the minister is concerned. So at that level I think, clearly, the bill anticipates the importance of the provincial input.

I have made it, I think, very clear in my public statements that I would hope that the provinces would want to co-operate with us closely on this. I said that to all the provincial premiers, when they were here last summer, at the first ministers' conference, that I will be asking them to nominate a minister and senior official in order to assist that consultation process. I would think that one of the things that the provinces could do to help us would be, at an early date, to submit to us what their economic and industrial objectives are for their provinces, and indeed, I will invite them to do so as soon as this bill receives royal assent.

Senator Buckwold: The next question—

Senator Connolly: Do you mind if I ask a supplementary question, Senator Buckwold?

Do all the provincial governments have ministers who would have, as one of their primary responsibilities, that of dealing with the federal minister in this area? In other words, must you go to the premier for this, or—

Hon. Mr. Gillespie: Well, Senator Connolly, almost every province has a minister of industry, or a minister of industrial development, or something to that effect, with responsibilities in this area. Whether the provincial premiers will want to nominate such a person, or will want to reserve the right for themselves, is something, of course, that I cannot say.

Senator Connolly: No, of course not.

Hon. Mr. Gillespie: But I have already raised this issue with all the provincial ministers of industry. I have met them, so I personally do not anticipate any difficulty.

Senator Connolly: They would be the people to whom you would refer in the first instance, I take it?

Hon. Mr. Gillespie: On the assumption that their provincial premier has so designated them.

Senator Connolly: I see. What you would look for would be a designation.

Hon. Mr. Gillespie: That is correct.

Senator Connolly: I would think that it is important to have a very firm liaison with a provincial government, through a minister, dealing with yourself.

Hon. Mr. Gillespie: I agree.

Senator Connolly: But that machinery is already in contemplation, is it?

Hon. Mr. Gillespie: Indeed, it is.

Senator Buckwold: Do you envisage, Mr. Minister, then, that an acquisition, or anything that comes under the act, that could be turned down in one province, would be acceptable to the review agency in another province?

Hon. Mr. Gillespie: Yes, I can conceive of such.

Senator Buckwold: I would hope so. Now, what about changing philosophies of provincial governments? Will you respond to those changing philosophies?

Hon. Mr. Gillespie: I think the philosophies are going to have to be stated.

Senator Buckwold: No, but, you know, we have perhaps a particular philosophy in my province today, which may change—I might say in parenthesis, hopefully—by a change in government. Would the agency then sort of be responsive to such provincial changes?

Hon. Mr. Gillespie: Absolutely, so long as those provincial changes are communicated to us.

Senator Buckwold: One last question, because this is fairly important. How important would the objection of one province be insofar as the request of another province in support of this application is concerned? For example, Saskatchewan was looking at a foreign-owned tractor plant, and from what I gather certain people in that industry located in another province were not too happy about that particular plant. How would you respond to a situation like that, where the interest of one province might be different from that of another, or where the interest of the industry might be different?

Hon. Mr. Gillespie: I think an assessment can only be made on its own merits, and I think every type of screenable transaction, such as you have described, will be slightly different. I do not think I can make any overall generalization, other than to reinforce what I have already said in respect to the stated provincial objectives. I just want to read this into the record, because I think it is important to make this point:

The compatibility of the acquisition or the establishment with national industrial and economic policies, taking into consideration industrial and economic policy objectives enunciated by the government or legislature of any province likely to be significantly affected.

I think that is an important point.

Senator McIlraith: Mr. Chairman, I should like to revert, if I might, for a moment to Mr. Gibson's evidence on the question of appeal, in order to try to get more clarification. Dealing with the three points on which he said there was review, and his reference to section 18 of the Federal Court Act, I would ask him if he would mind clarifying what he said, bearing in mind section 18 merely deals with the exclusive jurisdiction of the Trial Division of that court:

to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or

grant declaratory relief against any federal board, commission or other tribunal;

He seemed to jump to the wider term "review" in referring to that right of review and its effect. I would look at that clause as giving a somewhat narrower right than the right of review of the minister's attempt to take action and to merely give the courts a right in certain limited types of action that are rather strict requirements. Would he just deal with that narrower point of view by way of clarification?

Senator Connolly: Perhaps it might help us to have Mr. Gibson read into the record, if it is not too long, the section itself; that is, section 18 of the Federal Court Act.

Mr. Gibson: Mr. Chairman, section 18 reads as follows:

18. The Trial Division has exclusive original jurisdiction

(a) to issue an injunction, writ or *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

If I may elaborate on that briefly, there is a defined phrase used within that section which must be understood in order to derive effectively the meaning of that. The term "federal board, commission or other tribunal" is defined in such a manner, in the definitions section of the act, as to include an individual and, thus, the minister in the normal sense of the term. One would expect that would extend to the minister, but the special definition of that term reads, in part, as follows:

"federal board, commission or other tribunal" means any body or any person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of the Parliament of Canada, . . .

Senator Connolly: What section is that?

Mr. Gibson: That is quoted from section 2 of the act, the definitions section, and that is it in part.

In more specific reference to Senator McIlraith's point, I use the term "judicial review" in my discussion really to differentiate from the term "appeal" which was used by this committee in its report to the Senate. I did not want to give the impression that the type of relief that I consider is available under the act is relief by way of appeal. Nonetheless, there is, as I stated, an opportunity for the courts to review the activities of the minister under the provisions of the act and to make a judicial determination in respect to the appropriateness, as authorized by section 18. In making that review the court is authorized to grant declaratory relief and, in fact, to prevent the minister from proceeding further.

Senator McIlraith: May I ask for a little more clarification? You used the term "judicial interpretation" in respect to appropriateness. Isn't the right a little narrower? Isn't judicial determination as to whether or not the minister had taken the step and had any evidence whatsoever, however slight, on which he could have made a

finding or taken the action as the case may be? It is a little narrower, is it not?

Mr. Gibson: To take one example, the authority of the minister under clause 8(3) of the bill is to demand information in circumstances in which he has reasonable and probable grounds to believe that certain circumstances exist. In my opinion, the authority of the court would enable it to judge as to the existence of the reasonable and probable grounds on which the minister purported to act.

Senator van Roggen: With regard to Mr. Gibson's remarks in connection with appeal, I have to confess that I am not terribly impressed and feel that this is not really relevant to what many of us were thinking about as to appeal. I feel Mr. Gibson has pointed out to us that the courts can intervene to see that the minister does his job properly; but that is all. There is no right of appeal in the act, and I do not believe the senators should feel that because of Mr. Gibson's remarks there is a broad area of appeal. If the acquisition is not by a non-eligible person, or if it is not the acquisition of control, or if it is not a Canadian company, the minister should not be involved at all.

As I gather from his remarks, all Mr. Gibson is saying is that if the minister gets off on a wrong track on one of those facts, the court can set him straight. The main item of concern to anyone desiring the right of appeal, however, is the minister's decision as to whether or not something is "of significant benefit to Canada", and there is no right of appeal insofar as that judgment is concerned.

Therefore, with respect, I am not terribly impressed with this information we have been given that a writ of *mandamus* may be obtained ordering a public official to do his job properly. That can always be done. Why, Mr. Minister, are you completely opposed to any judicial review or appeal of your decision as to whether or not a foreign take-over should be permitted?

Hon. Mr. Gillespie: First of all, I would make this distinction between my decision and the decision taken. I would make the distinction that mine would be a recommendation, rather than a decision, to the Governor in Council. The second point that I should like to make is that a decision—

Senator van Roggen: Excuse me, Mr. Minister. That recommendation to the Governor in Council is to the Cabinet, so there is an appeal to the Cabinet.

Hon. Mr. Gillespie: What I will put to the Cabinet is the recommendation that either the investorship should be allowed or disallowed. I think that the decision which would then be taken by the Governor in Council is a policy decision, not a decision in law. For that reason, I do not think that particular decision should be reviewable by the courts.

Senator van Roggen: So we have come to the point where every foreign acquisition, over and above the dollar limits in the act, becomes a complete policy decision of the government?

Hon. Mr. Gillespie: That is correct.

Senator van Roggen: As to whether this is an advantage, the criterion "of significant benefit to Canada" could mean almost anything, I would suggest, in the eyes of the beholder. My point is, how does someone, wanting to

invest in Canada, establish to you that there is "significant benefit" in building, for instance, a motel in Vancouver?

Hon. Mr. Gillespie: If he were a non-eligible person, and the second part of the building has been proclaimed in respect of a new business, if he were not in the hotel business he would have to make an application and say, "This is what I am proposing to do. This is the size it is going to be. It is going to create this much employment and have these effects." That would be the course which I anticipate he would have to take.

Senator van Roggen: I think I can see the difficulty of having the courts interfere in that type of policy judgment. We have had enough difficulty in the Combines Investigation Act, trying to define "significant benefit". However, I wanted to make the point that there is, basically speaking, no right of appeal of the substance of an application by someone for an acquisition.

The Chairman: Senator van Roggen, the minister, before he arrives at the point where he decides to, say, recommend against or for, has to do certain things under the act, all of which—Mr. Gibson may agree with me—might be the subject matter under section 18. That is, he has to decide that there is an acquisition of capital. He has to decide the factors that are enumerated and the facts of the case set into those factors. If you have the kind of case where you think his conclusions are wrong, it appears to me, as a lawyer—but Mr. Gibson is the professional witness here—that you would have to say whether, in those circumstances, section 18 could be invoked on the ground that you are entitled to relief because there is no acquisition of capital, or the statement of facts does not conform or is not related to the factors that the minister might follow.

This is an indirect way of getting that recommended disallowance, but that would be a way of doing it.

Mr. Gibson: I think I did mention that opportunity in my statement. Certainly, I agree with Senator van Roggen. It was not my intention to suggest that there was an appeal for judicial review of the determination of "significant benefit". I agree with you, Mr. Chairman, on these other issues, that there would be access to the courts for judicial review.

Senator van Roggen: Which would make sure that the minister did not try to rule on something that he was not entitled to rule on under the act.

Senator Cook: My question may not be appropriate here, but it is one that seems to arise out of the discussion. Was any consideration given to the setting up of an independent authority to advise the minister, apart from having it as a departmental matter?

Hon. Mr. Gillespie: You mean a tribunal such as the Anti-dumping tribunal?

Senator Cook: A tribunal such as that suggested in Australia. Just to quote from the Prime Minister of Australia:

Foreign takeover proposals judged by the Government to warrant detailed investigation as to whether they would be against the national interest will be referred to an independent authority—including official Government representation—which will analyse each such proposal and report on it to the Government.

I am wondering if that scheme or idea was given any consideration.

Hon. Mr. Gillespie: I think it was given consideration in the early days, by another government, from the point of view of which direction we should go—whether we should go the independent tribunal route, and there are some advantages and some disadvantages in that—or whether we should go the route that we have gone.

The point I want to make is that this agency has a much greater identity than it had in the old bill. It is headed by a man of deputy minister rank reporting directly to the minister, whereas under the previous bill it was not headed by a man of such seniority and did not have that kind of identity. That decision was considered and it was taken in the light of the policy objectives of the government to go in this direction rather than the independent tribunal route.

Senator Cook: Without appearing to press you, what would be the disadvantages of an independent tribunal?

Hon. Mr. Gillespie: Well, I suppose you remove from the policy-making process the government of the day.

Senator Cook: That is a rather broad statement. All an independent tribunal would do would be to recommend or report to the government.

Hon. Mr. Gillespie: well, you may have your own particular conception of an independent tribunal. I am not clear as to what it should be. I am merely stating the general principle.

Senator Cook: And the general principle is what, again?

Hon. Mr. Gillespie: The general principle is that the policy-making process should be the process of the government. In other words, the government should take responsibility and should be accountable for decisions relating to policy; and “significant benefit”, I suggest to you, is a question of policy.

Senator Cook: But, surely, that would not bar you from taking independent advice?

Hon. Mr. Gillespie: No. As a matter of fact, I suppose there may be occasions when we will want to take independent advice under the operation of the Foreign Investment Review Agency.

Senator Connolly: You envisage the agency as a semi-advisory group, then, do you?

Hon. Mr. Gillespie: Yes. The process will be as follows: the agency advises; the minister recommends; the Cabinet decides.

The Chairman: I am not sure that the agency does advise, Mr. Minister. I think the agency is a conduit or a clearinghouse through which papers may be moved forward from the applicants to the minister and from the minister back to the applicants, and perhaps from the Governor in Council. It does not make any decision.

Hon. Mr. Gillespie: No, but I expect that the agency or the commissioner will advise the minister.

Senator Connolly: Would it be helpful to ask this question: Where does the actual screening take place? Is it done by the Agency or by the minister? I realize it is done, in part, by the government.

Hon. Mr. Gillespie: The screening agency, as I described it in the past, very likely would be divided into three sections: one would be the registrar and legal section which would deal with the initial applications, the paperwork; the second would very likely be an operating section concerned with the bargaining itself—as I have indicated, there is a bargaining process involved; and the third, very likely, would be an analysis and research section.

I am talking here about an agency that initially might have 20 to 25 professionals and a comparable number of support staff.

Senator Connolly: But they would all be attached to the Foreign Investment Review Agency?

Hon. Mr. Gillespie: They would all be members of the Foreign Investment Review Agency reporting collectively, through a commissioner, to the minister.

The Chairman: Senator Godfrey.

Senator Godfrey: Although I did not originally intend to speak on the subject which Senator Connolly has raised, I would like to comment on it. I believe in the chamber, Mr. Chairman, you did talk about the agency as being a conduit pipe. In reading clause 7 of the bill I did not agree with you at the time. Clause 7 states that the agency's function is to advise and assist. The actual word “advise” is used in that clause.

Surely it is, in effect, the agency which you will use to do the actual screening and advise you as to what the decision should be? And I would presume that you would ordinarily accept that decision.

What I really wanted to speak about—

The Chairman: Just on that point, Senator Godfrey, I do not believe the agency originates any advice. I think that may be an instrument that the minister may use. He may say, “Do some research for me on this.”

Senator Cook: I think that is the practice. You make a judgment.

Senator Godfrey: What I want to speak about is the question of appeals.

The Chairman: Honourable senators, when we started our meeting this morning, I told you the minister had a commitment at 11.30 a.m. It is now a quarter to twelve. I had indicated to him that we would let him go, on his undertaking that he would be back here for 2.15 p.m., to continue the question period. If that is agreeable to senators, I suggest that we say to the minister, “Yes, you may go now.” Mr. Gibson and Mr. Lazar may remain, if we have questions we want to ask them, until our usual adjournment time. Is that agreeable?

Hon. Senators: Agreed.

The Chairman: Thank you, Mr. Minister.

Senator Godfrey: I would like to speak on the question of appeals. I think I have been guilty of something which I tell the younger lawyers in our office about, not to rely on someone else's legal opinion but to do their own research. I must confess that I relied on the opinion of the Canadian Bar Association, in the brief they submitted, and also on the report of this committee.

I find I had overlooked proposed section 8(3) of the Foreign Investment Review Act, which does permit, in effect, someone to go to the court before an actual prosecution can be started by the minister. I had also overlooked the definition of "administration" in the bill, as to who is covered under the Federal Court Act. I find that it is defined as "federal board, commission or other tribunal".

So I personally am satisfied with the explanation given by Mr. Gibson, at this point.

The Chairman: You are prepared to give way on the question of section 28 which you mentioned in your speech?

Senator Godfrey: Yes, it deals with appeals only. There is lots of scope in Section 18 to get to the courts. I retract that point, yes.

The Chairman: It deals only with decisions or orders, and under section 18 we would be dealing with recommendations.

Senator Godfrey: *Certiorari* and so on. You could use all those processes just as effectively as an appeal; whether you call it a judicial review, you can really get to the court. So I am satisfied on that point, subject to further points.

The Chairman: That is one score, Mr. Gibson, that you have!

Senator Godfrey: I admit that I am wrong.

Senator Connolly: Don't say that. Just say "I have modified my views."

The Chairman: Are there any other questions?

Senator Buckwold: We have heard Mr. Macdonald here, and I am interested in Mr. Lazar's reactions to the points put forward by the witnesses this morning, insofar as concerns those illustrations which he gave. Are you aware of them, Mr. Lazar?

Mr. H. Lazar, Adviser, Foreign Investment Policy, Department of Industry, Trade and Commerce: Yes, I am, sir.

Senator Buckwold: He dealt with the problems of internal changes in foreign controlled corporations, and with someone buying stock on the New York market, and so on. Would you clarify that a bit?

Mr. Lazar: Mr. Chairman, may I deal with the technical points first? Perhaps we can come to the question of buying stock on the New York market, afterwards.

Thus far we have probably heard, for one reason or another, from several dozen firms in the country. There have been various kinds of questions, for one reason or another, such as: Where does the bill now stand? Would you clarify this? Would you explain that? Thus far we have heard from only one firm that has had clients who appear to be touched by the kinds of technical reorganizations to which Mr. Macdonald was referring.

If I understand the minister's thinking correctly, if he discovers in the course of administering the act that there are difficulties of the kind Mr. Macdonald has described, he would then be in a position to consider whether amendments would be necessary. But thus far we have not had any general representations, if I could put it that

way, from the vast number of legal firms in the country which advise corporate clients.

I might also point out that the amendment which was introduced in the other place was based on recommendations of the Canadian Bar Association, who focussed quite explicitly on the matter of statutory amalgamations.

I am not sure that I can go beyond that. I think there could be circumstances in which there would be reorganizations of a kind described by Mr. Macdonald which could be picked up by the act.

The Chairman: Mr. Lazar, unless the minister decided to give an interpretation under the guideline provisions and to say that in the facts of this case there is not the acquisition of control which the act requires in order to operate—

Mr. Lazar: I know the minister heard your suggestion this morning, Mr. Chairman. I think this is a point he will review. On the face of it, I am not sure that this will be possible under the act, but it is something we will consider. The question involved here is whether the guidelines will go beyond the provisions of the bill itself, and that is something we would want to consider, I think.

The Chairman: You mean, whether there would be any statutory support for it?

Mr. Lazar: That is correct.

The Chairman: Or whether the guidelines would be legislated?

Mr. Lazar: Precisely, sir.

The Chairman: Nevertheless, I should like to get guidelines from the minister when we are dealing with the situation.

Senator Buckwold: Do I interpret you correctly, Mr. Lazar, in saying that if the problems of a technical nature that were raised this morning became significant or were of any serious consequence, regulations would be adopted to meet them?

Mr. Lazar: No, sir. If such difficulties did arise, I have reason to believe the minister would then consider amendments to the act. There is no regulation-making authority under the bill to make regulations of that kind.

Senator Connolly: Of what kind? I am sorry, but I did not hear the senator's question. What is the point, Mr. Lazar?

Mr. Lazar: If I understood Senator Buckwold's question, it was whether I had suggested that, if practical problems arose of the kind Mr. Macdonald referred to, the minister was prepared to introduce regulations. In my reply I indicated that I did not think the bill gave the minister that authority.

Senator Buckwold: But that amendments would be made.

Mr. Lazar: That is my understanding of the minister's position, if practical difficulties arise. I understand that Mr. Macdonald's firm does see some, and I was merely mentioning that thus far his is the only firm which has come forth with such representations. There may be others, but none has come to my attention. I did say that the amendment which was introduced in the other place did follow the recommendations of the Bar Association.

The Chairman: Mr. Lazar, the thing that bothers me is how you can say that there is an acquisition of control in a certain transaction, and immediately follow that by saying that the transaction involves no change of control. Is there some legerdemain or something mysterious which enables you to have those two things existing side by side?

Mr. Lazar: I think that is the technical point at issue, sir.

Senator Cook: Mr. Chairman, if the recommendations are right, does it matter if only one company has made them?

Senator Connolly: That is true. In fact, I was going to say the same thing. The fact that Mr. Macdonald's firm is the only one which has come forward with recommendations does not mean that they are not valid. They are still quite valid.

Senator Cook: If they are right, they are right.

Senator Martin: The witness did not say that they were not right; he said there was only one firm which had brought recommendations forward.

The Chairman: Are there any other questions?

Senator Buckwold: I would like to pin this down a little more because it worries me. Mr. Macdonald's first question concerned internal reorganization, that is, reorganization inside Canada where there is no change in control. That can happen easily. Suppose, however, there is some change, how do they prove "significant benefit" to the change?

Mr. Lazar: Mr. Macdonald talked in terms of four points.

Senator Buckwold: That was the first point.

Mr. Lazar: Actually, the first three of the four points are all variations on the same theme. I do not think I am misrepresenting Mr. Macdonald on that score. On all three points I think the answer would be the same; namely, that in introducing the amendment in the other place we followed the advice of the Bar Association, but that we were not aware at the time that there were likely to be inconveniences to business firms involved. We have seen little evidence thus far that there would be; but, in fact, if we are wrong on that point, the minister is prepared to introduce amendments.

I might add one other small point here: I am not convinced that businesses enter reorganizations just because the thought occurs to them one morning; they usually have economic and business objectives in mind. I am not convinced, therefore, that in all cases the transaction is necessarily neutral or that the reorganization is necessarily neutral. I can see where it would be, in some instances, but I suspect that they usually have some pretty important business objectives in mind.

Senator Connolly: And you might thereby meet the terms contained in clause 2(2).

Mr. Lazar: In some cases, yes.

Senator Connolly: Where you raise the economic level, or provide employment, or better efficiency, or more technology, and so on—these economic tests that are contained in clause 2(2).

Mr. Lazar: Yes, sir, I agree with you. I am suggesting that this would arise in some cases, but not necessarily in all.

Senator Connolly: Mr. Macdonald would agree on that, too, I am sure.

Senator Godfrey: Just to get it straight, I understand the minister is prepared to accept a recommendation so that the word "amalgamation" is defined to mean "other than statutory amalgamation".

Mr. Lazar: I do not believe I said that, sir. I intended to state that if, in the course of administering the bill, the minister finds that there are practical problems, and that the bill is having an effect which was not intended, as I understand it, he would be prepared to introduce amendments. Thus far he is not convinced that there is a practical problem, but if he is wrong in this, that is my understanding of his position.

Senator Godfrey: Any lawyer, when he talks about an amalgamation, thinks of three things: either statutory amalgamation; or amalgamation by means of winding up one company into another; or amalgamation by the purchase of assets of another company. The minister himself, when he gave evidence—

The Chairman: There used to be another way. There used to be the merger.

Senator Godfrey: Yes. They call it "amalgamation" or "merger".

The Chairman: They did not call it that. If you were operating in the days when you had, say, an Ontario act and a federal act, or an Ontario company and a dominion company, and you did not have amalgamation proceedings, you only got them in the federal act some years ago—and therefore the design was to call it a merger, and that presents another problem in looking at this. If the courts were interpreting this section, since the word "statutory" is not used—I know what Mr. Macdonald's point has been, namely, that the fact that they say there is a resulting, single corporation points to a statutory amalgamation—I do not know what interpretation the courts might make. They might say that this is a broader term than a statutory amalgamation.

Senator Godfrey: But if you wind up a corporation, after selling all of the assets, the argument comes up; but I do not know just why you would not put in a definition to include what lawyers think of as "amalgamation," and what the minister thinks of in that way, because he used the word "amalgamation" this morning—he did not say "statutory amalgamation." Why would he not include these other things? They are all equally amalgamations.

The Chairman: The minister, under the bill as it now stands, might get legal advice where there is something short of a statutory amalgamation covered within the bill.

Senator Godfrey: Why do we not have just the definitions section the way you pointed out—the one I had overlooked in the Federal Court Act—and why do we not just have a definitions section saying what "amalgamation" means?

The Chairman: Well, that is where we may have to come to, but as I understood Mr. Lazar—the minister will be here this afternoon and we can ask him—the minister is not so satisfied on this point that he is prepared to say now, "Yes, I will amend." But, as I understood what Mr.

Lazar said, it is that the minister is prepared to say, "If, in our experience, this point develops, I will be prepared to entertain an amendment or to recommend an amendment."

Senator Godfrey: Yes, but we can tell him that, in our experience, there are just as many non-statutory amalgamations, or used to be in the past, as statutory ones.

The Chairman: Well, you may be the expert witness.

Senator Godfrey: Yes.

The Chairman: Are there any further questions at this time, or should we take an early adjournment until 2.15 p.m.? Is that satisfactory?

Honourable Senators: Yes.

The Committee adjourned until 2.15 p.m.

The committee resumed at 2.15 p.m.

The Chairman: We have the minister back with us, and how long he remains here will be determined by the questions. We had a good morning, so far as questions were concerned. There were a few things that were left open and, if I might, I should like to ask a question that I have in mind, and then the committee can take over.

Mr. Minister, this morning after you left we were discussing with Mr. Lazar the points raised by Mr. Macdonald. I was wondering what comment you might have, based on your study, or a study by your people, as to the volume or lack of volume in this area, and what your attitude would be if it should appear to become a material matter.

Hon. Mr. Gillespie: It would be very, very hard to assess what the volume might be. I am mindful of the fact that Mr. Lazar mentioned to the committee after I had left that this was not a question raised by the Canadian Bar Association. There was one raised by them that was dealt with by way of amendment. It may be that the particular question that Mr. Macdonald raised will surface and will create difficulties. I am not yet prepared to say that it will or that it won't, but I can tell you that if it does, I will be prepared to recommend to my colleagues amendments to deal with that question.

The Chairman: Are there any other questions on this point?

Senator Connolly: Not on that point, Mr. Chairman, but I have some others.

The Chairman: Well, may I go on to another point? In the course of the recommendations made by the Senate committee there were a number of items, not too many, possibly six in number, which have not been reflected in whole or in part in the amendments which have been made in the bill or in the undertakings and explanations you gave this morning. I was wondering how far you would be prepared to go in the event of there being amending legislation—and I would say that in a bill of this kind, where you are breaking new ground, there are bound to be amendments and, maybe, quite a number of them within a reasonably short time—whether, when the question of amendments is being considered, you are prepared to say that the recommendations which we have made and which you have not dealt with, or in relation to

which you have not given undertakings, will be looked at for the purposes of any amending bill you may see fit to introduce.

Hon. Mr. Gillespie: Before I answer that question, I should expand slightly on my previous statement with respect to Mr. Macdonald's submission before you this morning.

In the answer I gave you a moment ago I was referring to the corporate reorganization rather than to the other question which I believe he raised with you having to do with the issue of extraterritoriality or some aspects of it which I consider to be a quite separate issue. I would be pleased to talk about that.

On the broader question with respect to the practical difficulties that may emerge in the administration of this bill, I think it only fair to say that because this bill is breaking new ground, to use your own words, it is the first of its kind, undoubtedly there will be in the years to come amendments which will be aimed at improving the bill and removing any weaknesses which in the course of its administration may turn up. I am under no illusions about that, and I think any legislator who has been on the Hill for very long would know that the very nature of the process is one where amendments are introduced from time to time. So, I would say, yes, if difficulties do emerge in the other areas or any area, for that matter, of a practical nature, then I would anticipate that there would be amendments brought forward; and, if I were minister, I would certainly want to recommend to my cabinet colleagues that such amendments be brought forward.

The Chairman: Once this morning, in dealing with real estate, I think you used the expression about appropriate measures. I assume you meant appropriate amendments.

Hon. Mr. Gillespie: I think I was perhaps referring to the judicial review question when I was talking about appropriate measures. I do not think we actually got into a very detailed discussion on the real estate issue. I think that in my opening remarks I referred to the real estate area and the fact that this had been one of the areas of your concern.

The Chairman: According to the transcript, Mr. Minister, this is what you said. You were talking about the provision of an appeal process. You said you would probably seek legal advice first, and that was a smart answer! It was a good answer. Then you said:

I would want to get the advice of the Department of Justice. I do not hold myself out as an expert when it comes to understanding legal opinion, but as I understand the position, clause 18 would provide for the review that you seek. In the event that experience indicated that the opportunities for that review were not there, or that that clause did not apply, then I would seek appropriate measures, or recommend to my colleagues that they take appropriate action to ensure such review.

I assume from that language that you only meant one thing, and that is that you were talking in terms of amendment.

Hon. Mr. Gillespie: When I talked about seeking appropriate measures?

The Chairman: Yes.

Hon. Mr. Gillespie: Yes.

Senator Smith: I wonder if I might get into another area. I was quite interested in what the minister had to say this morning about consultation with the provinces. It worried me for quite a long time and no easy solution seemed to be in sight. The minister mentioned that there had been a first ministers' meeting at which they discussed this problem. I want to point out to him that since that time the most recently appointed minister of development in my own province made a strong statement about his opposition to the bill. His story gets very good press down there. The former manager of Industrial Estates Limited is now strongly opposed to this bill. The premier himself is on the record as being opposed to it. Now, were you satisfied that they understood what you were trying to convey to them, and which I must say that this morning I was quite encouraged by; or are there still some areas, of which they made you aware, where they indicated that they were not quite satisfied with the proposed consultation process?

Hon. Mr. Gillespie: I think you would have to ask them as to whether or not they are satisfied. I am not sure that one ever satisfies a politician. I think you always try to improve upon the condition you are confronted with. I would say to you, though, that the consultative process that we have built into the bill, and which I have outlined this morning and to the first ministers, should provide for your province, and for any other province, a full opportunity to make its representations with respect to a particular new investment or with respect to the take-over of an existing one. I think that, as in all cases of this kind, it takes two to tango. I shall be asking the provinces very early on if they will submit to me what their enunciated industrial and economic objectives are for their province, and I shall be asking them to nominate a minister and official. Before the second proclamation, that being with respect to the establishment of new businesses, I will be meeting with them. In fact, I hope to be meeting with them to deal with the channels of communication before the first proclamation.

So it would seem to me that the voice of the provinces will be heard. The phrase I have used throughout the discussion on this bill is that the provinces will be given a voice but not a veto. I think that is probably, in as few words as I can use, a way of distinguishing it. They will be given a voice. This is a national bill concerned with national policies, and, therefore, there should be no provincial veto.

Senator Smith: Since this morning I have been going over in my mind examples of the kinds of industrial developments which we have had in recent years in my own province and, in fact, in all the other Atlantic provinces. I cannot think of one which would come before this review board and run into any real difficulty. I am thinking of such enterprises as Michelin Tires, the rather extensive addition to the pulp and paper industry, the substantial enlargement of the oil refining industry, which is going to become much bigger in the future with the use of our deep-water ports, and so forth. None of the enterprises which I can readily run down in my mind would seem to be subject to this bill.

I often wonder what kind of enterprises, from your point of view, you had in mind which might possibly encounter fairly rough going in any review process.

Hon. Mr. Gillespie: I do not think we should start out with the assumption that new investment is going to experience rough going or set a rough going over. There is no bias of that kind built into the bill, that I am aware of. I have said on many occasions that we will continue to welcome foreign investment, and that is so. This act, for the first time, will provide a method whereby the federal government can screen and assess a new investment or takeover against a national criterion, that criterion being "significant benefit". I think it has to be viewed in those terms.

Having said that, I would expect that the vast majority of major investments of the kind you have in mind, senator, would have been allowed. Some of them, perhaps, might have provided a rather larger benefit to Canada than in fact has been the case. I am not putting the investment down as being an investment which has not been of benefit to Canada, but in the circumstances it may have been that the province—if the province had been involved in the negotiations—being rather fearful in some instances that another province might get a better deal, was not able to exercise, because of its economic position, as much weight or was not able to lean on the potential investor in the way it might have to the advantage of its region.

Senator Smith: I understand that point very well. It is a point well taken. I am not expressing an opinion contrary to the bill, but these kinds of statements from my own part of the country do worry me. I would like the public in that region to be well aware of the kinds of statements you have made here today, particularly your reference to the attention that must be given by all concerned to the techniques that have been developed over the years for regional development. Surely, this puts your decision-making on a different stage than if it were in the hot line in Ontario? That is all I have to say.

Senator McElman: I would just like to say that I share the views expressed by Senator Smith, as do so many Manitowish, and I appreciate the assurances of the minister.

I would like to direct my question to Mr. Gibson, if I may. This morning he explained the avenues which were available to prospective acquirers for judicial review, and I asked him if those same avenues would be available to the provinces, to which his answer was, "No." I understand it would lie with the provinces to directly apply. Is there any mechanism whereby a province could join with a prospective acquirer to use those avenues?

Mr. Gibson: In the event that a province sought to be joined in a proceeding concerning the administration of this bill, the issues that would be before the court would be the obligation of determining whether the issues then before the court were a matter in which the parties seeking to be added—in the example given, the province—had an interest. The issues, as I indicated this morning, which would primarily be the subject of judicial comment would be the issue of eligibility, the issue of acquisition, and the issue of Canadian business enterprise. These are not the questions in which the essential interest of the province is involved. The primary interest of the province, in fact, is in the question of significant economic benefit which, as the minister has indicated, is an issue that would arise in the course of the minister's recommendations to the Governor in Council and thence in the Cabinet decision. In the circumstances, I cannot envisage a court being likely

to admit a province into the kind of proceedings I spoke of this morning.

Senator Connolly: In effect, what flows from that, I take it, is that the province, if it is at variance with the minister, must put its efforts towards convincing the minister that he is wrong and they are right?

The Chairman: Or the Governor in Council.

Senator Connolly: Yes.

Mr. Gibson: That would be my view, Mr. Chairman.

Senator McElman: In other words, no access to judicial review but to something that should be handled at the political level?

Mr. Gibson: Yes.

Hon. Mr. Gillespie: Indeed, that is provided in the bill itself.

Senator Connolly: Going back to the series of questions Senator Smith put to you, Mr. Minister, it seems to me that, particularly because of this measure and the discussion with respect thereto, people who are interested either in establishing a new business or in a foreign takeover would probably talk to the provinces first.

The provinces are likely, are they not, to know more about these projects, perhaps even before the federal authority is into it either officially or otherwise? It seems to me that the original investment is a matter that people who are making it—and it will be sizable, I assume, in every case—would be talking primarily to the provincial people about. Is that not so?

Hon. Mr. Gillespie: I think, particularly in the resource areas, Senator Connolly, that would be correct. One does not have to say more than what is the obvious on that one, whether it be a renewable resource, such as pulp and paper and timber rights, or whether it be in the mining area.

Senator Connolly: I am thinking of something of the nature of establishing a new refinery, for example. That has been done in a number of parts of Canada. Such an undertaking would be a big project and would certainly involve an increase in economic activity in the area where it is to be established.

Hon. Mr. Gillespie: I was going to go on to say, senator, aside from what I have mentioned in respect of the resource industries—and refineries are not in that category, perhaps, particularly on the East Coast where the crude would be imported—that when you get something that big, whether it is a refinery or a manufacturing enterprise, the province would be in on the ground floor, particularly because in some cases it would perhaps be through a DREE arrangement or because an infrastructure of one kind or another would be involved. The province, for example, would be involved in roads, or a series of other services which would be absolutely essential to that particular project.

Senator Beaubien: Mr. Minister, why would we put in that only five per cent of the stock would, under any circumstances, be deemed to give actual control? Senator Gélinas and I now have together been over 100 years in the brokerage business, and I do not think we have ever seen anybody owning five per cent of any stock having any say in the administration, really, and certainly never

having any control. Mr. Minister, how was the figure ever arrived at?

Hon. Mr. Gillespie: Senator Beaubien, it is a very arbitrary figure. Any figure is an arbitrary figure.

Senator Beaubien: Well, Mr. Minister, I can see perfectly well that if someone goes in and buys 51 per cent, now you are beginning to talk, and I suppose, in a very large company, if anybody had a very large block—

Senator Gélinas: We are talking about working control.

The Chairman: But Senator Beaubien, you know what you are overlooking? You are overlooking the fact that while five per cent is the threshold, it is open to the person who has five per cent to establish that it was not his intention to, or that he could not, control with five per cent. I would think the big difference might very well be between whether this is a portfolio or a passive investment, or whether it is some person who is planning to participate in the management of the company.

Senator Beaubien: To me, it is completely irrelevant. I do not see what difference it makes if I own five per cent of a company. If you are going to run around and see some of our companies that might have five per cent—Molson Breweries have, say, 17 million shares. If you take five per cent, you are only running into \$30 million. I mean, all of a sudden, are they going to be deemed to be under foreign control because some Arab wants to buy \$30 million worth of their stocks, or something?

Hon. Mr. Gillespie: Let me make a couple of points. The first one I would like to make is that this bill is concerned with control.

Senator Beaubien: Yes.

Hon. Mr. Gillespie: It is concerned with the screening of control; it is not concerned with the screening of ownership.

The second point I would like to make is that control is often exercised, particularly in the larger corporations, at well below 50 per cent ownership. I suspect that there are firms, public firms, where control is in fact exercised pretty close to five per cent.

The third point I would like to make is that it is an arbitrary figure; there is nothing magic about five per cent. It is a presumption which is rebuttable. If, after a period of operation with the bill, we find that that particular five per cent threshold is not a particularly practical threshold, then I would want, if I were the minister, to introduce an amendment to change it; because, clearly, there is no point in having a threshold which is inoperative, but which creates difficulties in the business community, and equally serious difficulties as far as the administration of the act itself is concerned; because you have to screen, or appear to screen a lot of transactions which the bill itself would not anticipate.

So, really, I think one has to take the pragmatic approach; it is arbitrary; there is nothing magic about it. If it is not right, after some operation, some experience—fine!

Senator Beaubien: In the case of companies like CPR and so on, where the control may or may not be outside the country, are deeming, because they are controlled by their board of directors, that they are in every sense of the word Canadian companies?

Hon. Mr. Gillespie: Well, in the case of large firms that are located in Canada there is a provision, as you know, in the bill for a binding ruling as to whether or not that particular firm is ineligible, or non-eligible. I would expect a large number—

Senator Beaubien:—would be deemed to be—?

Hon. Mr. Gillespie:—of firms of that kind to make an application to me for a ruling which ruling will be binding on me for two years, unless there is a material change in the circumstances.

Now, that ruling may go one way or the other. I am not forecasting what that ruling will be at the moment, but there is provision in the bill for that ruling, which is binding. I think, as I indicated this morning, that that is something which was inspired by the recommendations of this committee.

Senator Gélinas: Mr. Chairman, may I ask the minister if he would tell this committee about the composition of the review agency, about the commissioner, and how many members there will be—not identifying the individuals at this moment, but as to their number, and how they will function?

Hon. Mr. Gillespie: Well, I think that with regard to what I referred to as the first stage this morning—which is proclamation of the first part, dealing with takeovers—25 professionals and roughly the same number of supporting staff would make up the agency. That does not mean that that is the total of the resources available to the agency, and I would not want to create that impression. Very much more will be available to the agency through the sector branches in my own department. So that is roughly the working group, there—forty to fifty people for the first part.

Senator Gélinas: Will you qualify that? When you say “professionals”—

Hon. Mr. Gillespie: I am not so sure what the Public Service description of a professional is, or of what an officer is, but I am referring to a professional, or an officer, as someone other than support staff. Does that help?

Senator Beaubien: Thank you. Now, will this board be travelling, or will it just be in Ottawa all the time?

Hon. Mr. Gillespie: I would expect that it will be located in Ottawa.

Senator Desruisseaux: Honourable minister, I am sorry, but I missed this morning's session; it was because of a prior obligation that I was away from here. I made an overture in the Senat—I am told, a strong, passionate overture—somewhat against the foreign review bill.

My reasons for this were, basically, twofold. You may have talked about this matter this morning, and if so I will not require an answer now; but if it has not been answered before, I would like to have your views.

I have, first, the fear that being a political policy affair, in a way, we are somewhat subjected to the policy changing as we go along, in the years to come, and my fear is also that this possible changing of policy would keep away some of the possibilities that we may have for Canada in the way of foreign investment. I am not against foreign investment, and I agree that there is a point where you have to control, to a certain extent.

My second point was that constitutionally the provinces had their rights pertaining to their own provincially formed companies, in which foreign investment was hoped for, in which it could be invested. I read the statement by the representative of the Department of Justice in connection with constitutionality, and to me it was unsatisfactory, as I saw it. Possibly I am wrong. It seems, by the approval that the bill received elsewhere, that I could be wrong. I would, however, like, if it has not been touched upon before, to get some enlightenment on these two points.

Hon. Mr. Gillespie: Perhaps, Mr. Chairman, I could ask Mr. Gibson to speak to the issue of constitutionality. Before I do that, however, I might just deal with your first point, Senator Desruisseaux—that is, the point about policy changes. You are concerned that because governments may change their priorities, or even their objectives, in terms of industrial policy, the operation of this agency itself will reflect that. I would suggest to you that is an important part of the structure, of this whole administration: that it is to be seen as an element, as an instrument, of industrial policy for Canada; that it is not remote and left aside to pronounce in an ivory tower as, perhaps, a tribunal might.

I say to you, as well, that we should not have to be defensive with others on this point, because other countries have adopted measures with respect to the screening of foreign investment in their countries which are a lot less open than the process which we propose adopting here. In fact, I would put it to you that the process we propose adopting here is as open a system, with the ground rules laid out, as any other industrialized country has adopted to date. I do not think we have to be defensive on those terms.

On the point of constitutionality, as I have indicated to honourable senators here, this is not my field. I will call upon legal advice when we get into areas of constitutional jurisdiction. Perhaps Mr. Gibson would like to speak on this.

Mr. Gibson: Mr. Chairman, the honourable senator mentioned that he had an opportunity of reviewing the evidence of an officer of the department before this committee. I was that officer, and I am not certain that there is anything I can add at this point. I have had an opportunity, since appearing before the committee, to review several briefs submitted to this committee and to the other place, among others that of the Canadian Bar Association. I noted comments, and I take some solace from the fact that most of the briefs that commented in this area raised the same grounds as the constitutional basis for this legislation as those I referred to before this committee.

I have also had an opportunity of discussing the bill on several occasions, both with the Canadian Bar Association and in other forums with lawyers, and I have found that I have substantial support, from those that I have spoken to, for the comments I made to this committee at an earlier date. I would be happy to review those again with you, if you so wish, but I do not have anything new to add on that subject.

Senator Desruisseaux: I have a question to ask for clarification purposes, and I hope it has not been touched on before here. I want to be brief on this, and I will allow you to be brief in your reply also. Some of the provinces, and particularly the Province of Quebec, have made state-

ments that they were in opposition to what was being done because of the constitutionality question. This may have been badly reported in the press, and that is where I read it, but I would like to know whether you have had some discussions with the provinces on this matter.

Mr. Gibson: No, senator, I have not taken part in any discussions specifically with representatives or with the counterparts of my department at the provincial level.

Senator Godfrey: I have two questions arising out of clause 4 and what the minister said previously. My first question is this. If the C.P.R. wants to get a ruling, can they apply right away when this act becomes effective, or do they have to wait until they are considering such an acquisition? I gathered from what the minister said that they could apply right away.

Hon. Mr. Gillespie: If they want to establish their eligibility or non-eligibility, and if they want a ruling on it, then they can apply right away.

Senator Godfrey: The second point is that you said that the ruling would remain in force for two years. I am puzzled over the wording in the last paragraph of clause 4. It does not say "the lesser of two years or as long as the facts remain unchanged," and I cannot really follow that wording at all. It could be interpreted that it might provide for five years as long as the facts remain unchanged.

Hon. Mr. Gillespie: As I have indicated to you and to others, I am a firm believer in legal advice when it comes to a matter of law and its interpretation, so perhaps, once again, Mr. Gibson would comment on this.

Senator Godfrey: I would have thought that it would be confined to the lesser of two periods, but it does not say that at all.

Mr. Gibson: I must say that that was the point raised at the meeting of the Canadian Bar Association to which I referred. The rebuttal of the point made at that time, not by me but by a member of the profession, was that the facts of such a situation, and on which such an opinion would be based, are normally of such a nature that the danger of their remaining stable and unchanged for more than two years is so remote as to make the question not really relevant.

Senator Godfrey: That is no answer to my question.

Senator Buckwold: Mr. Chairman, I made a note when the minister was speaking with reference to real estate. He said it is not the intention to screen the acquisition of the property itself. At least, I think that is what he said. First of all, what is meant by "property"? Does it involve buildings and land, or land only? Would it involve farm land? I am really looking for information here. If an individual came in and wanted to buy an apartment building, would that have to be screened? And what is the situation about a piece of vacant land or farm land?

Hon. Mr. Gillespie: I think, once again, I am going to seek legal advice here because we are talking about legal concepts, rather than what might be described as business concepts, when we talk about property and businesses. Clearly, the acquisition of vacant land is not the acquisition of a business. The screening process is concerned only with the acquisition of a business by a non-eligible person. Acquisition of vacant land is not acquisition of a business. Acquiring vacant land for the purpose of de-

velopment might very well be. I think that is probably as far as I should go in legal interpretation, and I would ask Mr. Gibson if he would care to comment further on the distinction between property, on the one hand, and a business, on the other.

Mr. Gibson: I am not sure that I can elaborate in much more detail on that particular concept. The definition of "business", included in the bill on page 3, provides that it includes:

... any undertaking or enterprise carried on in anticipation of profit;

The opinion that I have expressed in this connection, in relation to this bill, is that the holding of property for investment is not in itself the carrying on of an undertaking or an enterprise and, therefore, would not constitute a business within that expression.

Now, the question of fact that arises as one moves from the mere holding of property for investment towards what would clearly be recognized as the carrying on of a business, the carrying on of an undertaking or enterprise for profit, is a very difficult one; and with regard to the point at which one steps over the line, as I am sure many honourable senators are aware, there is a large body of case law, particularly in the Income Tax Act. It is a very difficult area. I would hate this afternoon, without having more notes than I have before me now, to set up precise criteria.

Senator Buckwold: I am even more confused now. If my colleague owned a piece of land somewhere—I assume as an investment, because I suppose generally one must regard the ownership of land as involving an investment possibility—I gather from what the minister said at the outset that the ownership of that vacant land would not be subject to the terms of this act if it was not determined to be a business in a land holding company or something like that. Is that correct?

Mr. Gibson: Yes.

Senator Buckwold: If there was an apartment on that land and a foreign owner wanted to buy it, and it was worth more than \$250,000, would it have to be screened?

Mr. Gibson: Mr. Chairman, I think the facts that I have been given are not sufficient for me to answer that question.

Hon. Mr. Gillespie: I think it depends on the scale of the operation. I might interject at this moment by putting on the record my intention to issue guidelines with respect to questions of real estate under the terms of clause 4(2) of the bill, and then to elaborate on these guidelines. I would expect that these guidelines would spell out, with as much clarity as is possible, the operative factors which distinguish business from property. They would help to identify the circumstances when an acquisition of property or real estate would not be subject to review because it is not a business. One example I can give here is that if a person were to buy a farm as an operating business, then technically that would be reviewable. But if a person were to buy a farm, that is to say a piece of land and not the business, that would not be. It would be that kind of clarity and distinction I would hope to be able to put out in the guidelines.

I feel that one of the considerations underlying the committee's recommendations is the fear of a possible

failure to distinguish real estate from the business of property, as such. I feel such guidelines would add a substantial measure of predictability to the legislation and would remove a large number of doubtful transactions from the purview of the act.

Furthermore, I should like to go on to say that I am looking at the specific details of the proposal. As I envisage the guidelines, they will include a number of principles together with a number of concrete illustrations indicating the kinds of cases we believe to be reviewable and those which are beyond the authority of the act. I expect to be able to provide further details well in advance of the first proclamation of the bill.

Senator van Roggen: I have a question for the minister. This morning you referred to the fact that you welcomed the bargaining power that the act provided you with. This is something I subscribe to, and one of the reasons I will support this bill is that I think that, even before they come to you, people interested in a take-over are going to become much more imaginative than they have been in the past in thinking of what degree of participation they can encourage, and what research and development they can bring, and what other things they can tie to the proposition before they come forward with it. I also appreciate the fact that you will be publishing guidelines. But I was wondering if you had applied your mind yet to the question as to whether or not when you made a decision, whether favourable or unfavourable, you would give reasons with those decisions so as to develop a body of case law, as it were, to be of assistance along with the guidelines. I am not suggesting that you go so far as the principle of *stare decisis* where these cases would be combined, but simply as part of the guidelines procedures and also to help maintain some evenness across the country. Those of us from the outlying parts of the country are concerned that so many things done on a wholly *ad hoc* basis have a tendency to end up on the basis of what is good for Ontario is good for the rest of us. This is an area of legitimate concern. I do not mean by that this is done in a venal fashion at all, but there is an inherent approach to problems in Central Canada that is different to the approach to problems in the outlying areas with some of us are fortunate enough to come from. A body of reasons might well be of assistance in maintaining an even standard across the country.

Hon. Mr. Gillespie: I think what we are confronted with here is one of the classic problems regarding public policy: on the one hand, we have the wish to provide as wide an exposure and as much information as possible with respect to the operation of a particular act; and, on the other hand, we have to protect the confidentiality of those who are entering into transactions.

The side that we have come down on in this particular instance is confidentiality. If we were to make public the reasons for a disallowance or for an allowance, we might well be exposing the rather private confidential relations between the two corporations. It may be that in time it will be seen that we have been over-sensitive to this question. However, the bill does not provide for giving reasons for allowance or disallowance; it only provides that the decision be made public.

Senator van Roggen: I understand that. I had not thought

of the confidentiality aspect. It has a good deal of merit.

The Chairman: Honourable senators, we have had quite a go at the minister. If the area of questions for information, or otherwise, has been exhausted, perhaps we can dispense with the minister's further attendance and proceed to consider what we are going to do with this bill.

Is that the wish of the committee at this time?

Senator Macnaughton: Mr. Chairman, I had a few questions for the minister. However, I think your point is well taken. We have had a long discussion on this bill and have already made one report. The minister has been very courteous.

The Chairman: I do not want to shut anybody off. The questions have probed deeply and we have received a lot of information. A lot of our questions have been answered, although whether the answers are acceptable or not is a matter that may be developed when the committee considers what to do with the bill.

Shall I inform the minister now that his attendance is no longer required?

Hon. Senators: Agreed.

The Chairman: We appreciate your having come here, Mr. Minister, and the information which you have given us so willingly and so completely. We will no longer require the attendance of your advisers either, Mr. Minister, because when we get down to the business of deciding what we are going to do, we are then into the confidential part of our discussion.

Hon. Mr. Gillespie: Mr. Chairman, I wish to express my appreciation, through you, to the members of your committee. I am sure there is some sort of invocation a minister should be able to introduce at this time: May discretion, wisdom and God be with you!

Senator Desruisseaux: I would say the same to you, Mr. Minister.

Senator Macnaughton: I would suggest you leave right away!

The Chairman: This brings us to the stage of what we call *in camera* discussion. This means we do not have reporters present. There is also the question of whether we should even have a *Hansard* record of our discussion, in the circumstances. Speaking as one member of the committee, I believe it should be strictly *in camera* so that the means by which we reach our conclusions will have to be gathered from the conclusions themselves and whatever speeches are made, as and when the report is presented.

All of the documentation is in the record now, and I arranged this morning to have the proceedings available by the end of the day, so the committee will have no difficulty in getting, almost immediately, copies of the proceedings thus far. This may be of assistance to the committee.

The committee continued *in camera*.

The committee adjourned.

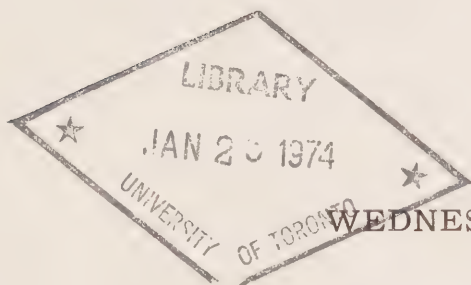


FIRST SESSION—TWENTY-NINTH PARLIAMENT

1973

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable JOHN J. CONNOLLY, *Acting Chairman*



Issue No. 24

WEDNESDAY, DECEMBER 19, 1973

Complete Proceedings on Bill C-135,
intituled:

**“An Act to provide additional financing mechanisms and institutions
for the residential mortgage market in Canada”**

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Aird	Hayden
Beaubien	Hays
Blois	Laing
Buckwold	Lang
Burchill	Macnaughton
Connolly (<i>Ottawa West</i>)	*Martin
Cook	McIlraith
Desruisseaux	Molson
*Flynn	Smith
Gélinas	Sullivan
Haig	Walker—(20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of Proceedings of the Senate,
December 13, 1973:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Stanbury, seconded by the Honourable Senator van Roggen, for the second reading of the Bill C-135, intituled: "An Act to provide additional financing mechanisms and institutions for the residential mortgage market in Canada",

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Martin, P.C., that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, December 19, 1973

(26)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 10.00 a.m. to consider the following Bill:

Bill C-135 "Residential Mortgage Financing Act".

Present: The Honourable Senators Blois, Buckwold, Connolly (*Ottawa West*), Desruisseaux and Smith (5).

Present, not of the Committee: The Honourable Senators Phillips and Stanbury. (2)

Upon motion of the Honourable Senator Buckwold, it was Resolved that the Honourable Senator Connolly be elected *Acting Chairman*.

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Witnesses:

Department of Insurance:

R. Humphrys,
Superintendent.

Central Mortgage and Housing Corporation:

A. D. Wilson,
Executive Director.

Department of Finance:

A. E. J. Thompson,
Director,
Corporation and Business Income Division,
Tax Policy Branch;

B. D. Champion,
Advisor.

After discussion and upon Motion, it was Resolved to report the said Bill without amendment.

At 11.25 o'clock a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

Report of the Committee

Wednesday, December 19, 1973

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-135, intitled: "An Act to provide additional financing mechanisms and institutions for the residential mortgage market in Canada", has in obedience to the order of reference of Thursday, December 13, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

John J. Connolly,
Acting Chairman.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, December 19, 1973

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-135, to provide additional financing mechanisms and institutions for the residential mortgage market in Canada, met this day at 10 a.m. to give consideration to the bill.

Senator John J. Connolly (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, appearing before us this morning is Mr. R. Humphrys, Superintendent, Department of Insurance, and Mr. A. E. J. Thompson from the Department of Finance. I think the best approach would be to have Mr. Humphrys give us a general overview of the bill, following which we can take it clause by clause, if that is the wish of the committee. If our decision is to consider the bill clause by clause, I would suggest we keep Mr. Humphrys available. Perhaps he could take us through the bill in that way.

Is it your wish to hear Mr. Humphrys?

Senator Phillips: Mr. Chairman, I would point out that Mr. Humphrys has already given an extensive statement on this bill in the House of Commons committee. I think the committee should be concerned with clarification rather than a re-explanation. I find that in these committee meetings, regardless of who the witness may be, we can consume half of the committee meeting time listening to the witness instead of questioning him, as we should be doing. I suggest that we should perhaps at least limit the amount of time for any statements, following which we could get to our questioning.

The Acting Chairman: Thank you, Senator Phillips. I would think Mr. Humphrys' idea would be to give a brief explanation, with an overview of the bill. Once that has been done, we can get right down to the detail.

Mr. R. Humphrys, Superintendent, Department of Insurance: Mr. Chairman, I should like to mention that Mr. Arnold Wilson, from the Central Mortgage and Housing Corporation, is here this morning. Mr. Wilson was active in the preparation of this bill and was one of the principal witnesses before the House of Commons committee.

The Acting Chairman: I did not realize you were appearing before us this morning, Mr. Wilson. I apologize for not having introduced you.

Mr. Humphrys: Also appearing this morning, Mr. Chairman, is Mr. B. Champion of the Capital Markets Division, Department of Finance.

By way of a brief explanation of the bill, it is, as the chairman has said, in three parts. The first part deals with the formation and operation of a corporation called the Federal Mortgage Exchange Corporation. The principal purpose of this new corporation would be to buy and sell mortgages and make loans on mortgages with a view to enhancing the marketability of mortgages on residential property in Canada. The purpose is spelled out in clause 3 of the bill.

It should be emphasized that the intention is to have this corporation act as a catalyst in the financial market, having as its main purpose the encouragement and development of an active secondary market for mortgage loans.

It would not act as a general mortgage bank ready to buy mortgages from anyone or any institution who found himself overloaded. Instead it would be mortgage trader and would carry only such inventories as necessary to permit it to match, in a reasonable way, the mortgages that come on the market for sale and the demands of those who want to buy mortgages. The operating rules, of course, would be fixed by the management itself, but it is thought that generally it would deal with financial institutions and investment dealers who are interested in forming a secondary market.

It would be established originally as a crown corporation. The authorized capital is \$100 million; it has a borrowing capacity of \$300 million. The government would be authorized to subscribe and to pay up to half the authorized capital, \$50 million, and to lend the institution up to \$225 million. However, any lending by the government in excess of \$150 million would have to be matched dollar for dollar by borrowing from the private sector. It could increase its borrowing capacity with approval of the Governor in Council.

The corporation would be confined to buying and selling residential mortgages that qualify as investments

under the Loan Companies Act. The significance is that such mortgages cannot be for more than 75 per cent of the value of the real estate unless the excess is insured by CMHC or through a private mortgage insurance company registered under federal legislation.

The Acting Chairman: Do you mind if I ask a question at this point? When you say residential mortgages, is that only for single unit dwellings or is it multiple unit dwellings as well?

Mr. Humphrys: It would include multiple unit dwellings. It is any residential property that is within the definition in the National Housing Act, and that includes housing projects, which would include apartments and apartment development.

Shares owned by the government could be sold to the private sector, subject to the approval of the Governor in Council; but, until Parliament otherwise approves, the government would have to keep more than 50 per cent of the shares.

The Acting Chairman: Until Parliament approves?

Mr. Humphrys: That is right.

The Acting Chairman: In other words, the act has to be changed?

Mr. Humphrys: Parliamentary approval would have to be given. The clause in the bill indicates that parliamentary approval is needed. It would be by way of amendment.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: It would have to be.

The Acting Chairman: It would not be by way of a resolution, or something?

Mr. Humphrys: It could be, I think.

Mr. Hopkins: Technically, it would have to be an act of Parliament; otherwise it would be approval of the Houses of Parliament, not Parliament.

The Acting Chairman: In any event, we do not have to cross that bridge at this time. If they do it wrongly, we will have it back here.

Senator Phillips: I will object to it and you will support it.

The Acting Chairman: That is right.

Mr. Humphrys: The general idea of attempting to encourage the formation of an active secondary market is based on the consideration that if such a market could be created a number of investors and investing institutions that are not now very active in the residential mortgage field would be encouraged to put a greater proportion of their assets in that direction. A secondary market not only makes mortgages available, but it permits the institution to adjust its portfolio if it feels it has got too heavily loaded.

The other general purpose would be, perhaps, to bring the interest rates on mortgages more into line with interest rates on corporate bonds of a similar maturity risk. It does not seem likely that even a successful second-

ary market would operate to the same degree of efficiency as the stock market or the bond market does, but much can be done to give a focus to the market as a central source of information and a reasonable opportunity to adjust mortgage inventories.

The second part of the bill deals with mortgage investment companies. They are really a special type of mortgage loan company. They would be incorporated pursuant to the provisions of the Loan Companies Act and would generally have the same powers. The main difference would be that a mortgage investment company would raise a much greater proportion of its funds by the sale of shares and a much lower proportion by debt instruments than does the traditional type of mortgage loan company.

A mortgage investment company would really be a special type of mortgage pool in corporate form. Under the bill a mortgage loan company of a traditional type could lever up to 20 times its capital and surplus. A mortgage investment company, on the other hand, would have limited borrowing powers, three times capital and surplus as a basic power, but going up to five times if it had at least two-thirds of its assets in the form of residential mortgages or cash. The whole emphasis is really on financing from the shares rather than debt instruments. It would have all the investing powers of a loan company, but it is not expected that a mortgage investment company would find it very advantageous to invest in any fields other than mortgages.

The Acting Chairman: Are there any mortgage investment companies in being at the moment?

Mr. Humphrys: Not at the moment.

The Acting Chairman: We have mortgage loan companies incorporated with the powers provided by the Loan Companies Act. Is that the story?

Mr. Humphrys: That is correct. It is possible that an existing mortgage loan company, if it meets the criteria in this part, could convert and be designated as a mortgage investment company. I think the likely course is that new companies will be incorporated if they want to operate.

The Acting Chairman: And they can be incorporated either provincially or federally?

Mr. Humphrys: Yes. That is relevant for the tax part of this bill, which I will mention. The part we are dealing with here, the second part of the bill, deals with the formation of mortgage investment companies under federal legislation.

The shares and debt instruments of a mortgage investment company would be eligible investments for regulated financial institutions, and it is expected that they would also be made eligible for pension funds. That would require a change in regulation under the Pension Benefits Standards Act.

The Acting Chairman: Just the regulation?

Mr. Humphrys: Yes.

The Acting Chairman: Would they qualify as trustee investments?

Mr. Humphrys: That would be under the federal Trust Companies Act, but one would have to turn to the provincial trustee acts to look for qualified investments there. Even under the provincial trustee acts, where a trust deed gives discretion to the trustee he may have investment powers much wider than those in the trustee acts. If a trust deed said the trustee could invest in any investments that are eligible for an insurance company subject to the Canadian and British Insurance Companies Act, that would automatically bring in shares and debt instruments of a mortgage investment company.

The aspects whereby a mortgage investment company would differ from a mortgage loan company are quite limited. First there is the leverage, which I just mentioned. Then there are the powers to invest in real estate. A mortgage investment company would have a little broader power to join other partners in real estate investments. A loan company can join only with a trust company, a loan company or an insurance company, but a mortgage insurance company could join with any corporation. However, its power to invest in real estate is rather limited; not more than 25 per cent of its assets can be so invested. It would be subject to a special liquidity test, not aimed so much at liquidity of demand obligations, but rather from the point of view of balancing cash flow. A mortgage investment company would be prohibited from accepting deposits.

The Acting Chairman: A mortgage loan company can accept deposits?

Mr. Humphrys: Yes.

The third part of the bill deals with amendments to the Income Tax Act. Amendments to the Income Tax Act here would be for the general purpose of providing a pass-through tax treatment for mortgage investment companies. Under such a treatment dividends paid by a mortgage investment company to shareholders would be treated as an expense to the company, and thus would be passed directly to the shareholders without tax at the corporate level. This would put the shareholders of a mortgage investment company in the same position as they would be had they invested directly in a mortgage loan. This comes back to the concept I mentioned earlier, that a mortgage investment company is really conceived of as a mortgage pool in corporate form. To the extent that a mortgage investment company does not pay out to its shareholders all its income, it would be taxed in the normal way.

The Acting Chairman: At the corporate rates?

Mr. Humphrys: Yes. This special tax treatment would be accorded to mortgage investment companies subject to a number of conditions intended to ensure that such a company retains its special character as a passive investor holding a pool of residential mortgages, as distinct from a corporation actively engaged in business.

The conditions are set forth on pages 19, 20 and 21 of the bill. I can briefly summarize them. The company must be Canadian and confine its activities to Canada. It must not engage in management or development, but must remain exclusively an investor. It must have at least 20 shareholders, and no one shareholder can hold more than 25 per cent of the stock. At least 50 per cent of the assets have to be in the form of cash or residential

mortgages. Borrowing has to be limited along the lines that I mentioned. Real property cannot exceed 25 per cent of the assets.

The significant thing in the income tax amendments is, first, the pass-through tax treatment, and secondly, that this treatment would be available to any company that met the criteria established in the income tax amendments.

Therefore, if a company were incorporated under provincial law that met these criteria, it would also qualify for this special type of tax treatment, so the conduit tax treatment proposed in this bill is not confined to federally incorporated companies.

Mr. Chairman, that is a brief summary of the bill. As you mentioned, I draw the attention of the committee to the fact that Mr. Wilson is here from the Central Mortgage and Housing Corporation, Mr. Thompson from the Tax Policy Branch of the Department of Finance, and Mr. Brian Champion from the Capital Markets Division of the Department of Finance. I think that amongst us we should be able to find the answers to any questions the committee might have.

The Acting Chairman: What does the committee desire to do? Would you like to hear Mr. Wilson, Mr. Thompson or Mr. Champion at this time; or is it your preference to attack the bill clause by clause, and then any of these gentlemen who have contributions to make could do so as we do that?

Senator Phillips: Why not have general questions first, Mr. Chairman?

The Acting Chairman: Yes, certainly at this time, after Mr. Humphrys.

Senator Buckwold: Probably we can avoid going through the bill clause by clause, in view of the very serious discussions we have already had. There just may be questions that have to be raised.

The Acting Chairman: All right, that is fine.

Senator Phillips: After all, Senator Stanbury and myself have gone through this, and I cannot see where it would be really necessary that anything more should be said.

The Acting Chairman: They were brilliant, outstanding performances.

Senator Phillips: You are very complimentary, but we had to prod you into that, Mr. Chairman.

The Acting Chairman: It is easy to prod me.

Senator Phillips: I want to ask one question concerning the directors. Are they to be full-time employees of the corporation, or go to an occasional meeting on the basis of a director's fee—or what are the terms of reference?

Mr. Humphrys: On the Federal Mortgage Exchange Corporation?

Senator Phillips: Yes.

Mr. Humphrys: The internal compensation would be set, I think, by the by-laws of the corporation. As long as a majority of the stock is owned by the govern-

ment, it would be a crown corporation and be subject to the same rules as crown corporations. It is likely that the board of directors would be part-time, in the sense that they would function as called for directors' meetings but would not be full-time or active in the management of the corporation. This is the usual pattern of directors of a crown corporation.

The Acting Chairman: They would probably be senior officials, perhaps from the Department of Finance, perhaps from your own Department of Insurance, perhaps from CMHC and other agencies of government that might have an interest in this?

Mr. Humphrys: It is, of course, for the Minister of Finance to appoint the directors. The likelihood would be to have some representation from government departments as long as the government has a substantial investment in the corporation, but it is almost certain that a substantial proportion of the board of directors will be drawn from the private sector.

The Acting Chairman: In the first instance, for a crown company. I believe Mr. Basford, in reply to such a question before the House of Commons committee, said he expected that a substantial portion of the board would be drawn from the private sector, right at the outset.

Senator Phillips: This is a point that is interesting to me. It has been indicated, both here this morning and in the evidence before the other place, that the mortgage exchange corporation would largely be dealing with banks, trust and insurance companies. We are setting up a crown corporation to deal with these people, and we are taking the larger percentage of our directors from these corporations with which the crown corporation will be dealing.

To me, we are setting up the ideal situation for a conflict of interest. I am sorry Senator Croll is not with us this morning, as he would be interested in this point too. I can fully appreciate the desire of the government to select a board of governors who will be knowledgeable and experienced in the mortgage field as well as in the trust, banking and insurance fields—and I would make a partisan remark, I suspect they will consider also their political affiliation.

I am greatly concerned that we are taking someone from a specific bank and putting him on a board of directors which will consider the purchase or sale of a mortgage portfolio owned by that bank. The same thing will apply to a trust company or insurance company and I think the board of directors will be inoperable for that specific reason.

The Acting Chairman: This may be a question of policy on which Mr. Humphrys may have difficulty in providing an answer.

Senator Phillips: I fully appreciate that, Mr. Chairman, but it is still a pertinent point.

The Acting Chairman: It is a most pertinent point. The committee may wish to have the minister come here and discuss this point. Mr. Humphrys, I do not want to put words in your mouth, but I think this is a question beyond your purview as Superintendent of Insurance, as to who would be on this board of directors from the private sector.

Mr. Humphrys: That is correct, Mr. Chairman. It is the prerogative of the Minister of Finance. I could only comment that this organization is essentially seen as a catalyst in the mortgage market, to encourage and create a type of market, and, as such, it would not operate as a massive buyer.

It would take great proportions of portfolios from existing institutions. As a catalyst in the market, it should buy only what it can expect to sell.

In establishing such a corporation, we could find no example in Canada. We have searched other countries and we do not find anything that is focussed quite so sharply on the concept of a secondary market as this exchange corporation will be. In considering its formation and the role it would play, it seemed that the kind of management, the kind of policy advice it would need, would have to be drawn from those portions of the private sector that are knowledgeable in the mortgage market—which limits the choice to some extent, if you are to get the kind of quality advice you need.

The point of conflict of interest which Senator Phillips raised is naturally one of concern, but it is true that it is a policy question that I cannot deal with in so many words. It is perhaps akin to some of the situations that one sees in financial institutions. I suppose it would be difficult for a bank, for example, to get a board of directors if that bank never dealt with any company in which one of the directors had an interest.

Senator Buckwold: Many boards that have directors appointed to government agencies or crown corporations have on them, as you pointed out, experts in the field who are there basically as good government and as citizens passing on their expert judgments; and this would go on in a variety of fields.

Senator Phillips: There is one distinct difference here, Mr. Chairman, which has been overlooked, and that is that a bank is made up of public shareholders who expect a return on their investment. Unfortunately, to date, I have not been able to convince the Canadian public that they should expect a return on their tax payments, although I eventually hope to succeed, with Senator Buckwold's encouragement.

Senator Buckwold: Yes, I keep encouraging you.

Senator Phillips: It is quite clear that for the first three years, at least, this corporation intends to operate with taxpayers' money, buying and purchasing from the private corporations which will be providing the directors.

The Acting Chairman: For the purpose of selling, Mr. Humphrys says. It is for the purpose of selling; it is a conduit. They will be buying mortgages for the purpose of selling them to other mortgage buyers.

Senator Phillips: That may be quite true, but I am still not convinced that it has altered the situation in this latest sense. I feel we have created a conflict of interest here.

Recently, the Prime Minister made a statement on conflicts of interest where senior public servants are involved, and perhaps that statement covers this situation. I am not clear on that point because his statement was made after I raised this question in my remarks in the

Senate. However, I think the point is one on which the minister should appear in order to give us further clarification.

Mr. Humphrys: I might add one further comment, Mr. Chairman, that may be relevant or significant, and that is that as a market-maker it is not likely that the exchange corporation would stand ready to buy from anyone. It probably would look to those institutions which are interested in making a market or participating in a market.

The main market should be made by the financial community itself, with the exchange corporation being rather a catalyst than the central figure in the market. This, I think, would mean that not every mortgage lending institution would be a client of the exchange corporation. Thus, I think that the minister would have some field of choice from institutions or individuals who are knowledgeable in the mortgage field that would not necessarily be dealing with the exchange corporation.

Senator Phillips: I do not wish to belabour this point, nor do I wish to involve Mr. Humphrys in what is largely a political decision. I do not think that is his function and I do not desire to involve him in that at all, but I would point out one further danger I see, in that a small trust company may wish to sell certain mortgage portfolios because it has found itself in difficulty. It is then dealing with a board of directors made up of its competitors.

The Acting Chairman: Maybe; there is a possibility of that.

Senator Phillips: There is the possibility of that happening, yes, and that is another point which should be considered.

Mr. Humphrys: I would think that it should be emphasized that the mortgage exchange corporation, as conceived here, would not fill the role of rescuing an institution that is in difficulty. It is intended to encourage a secondary market, but for a rescue operation the Canada Deposit Insurance Corporation is really the vehicle which has been created for that kind of thing. I think the exchange corporation just would not play that kind of role. That would not be its function. It would only buy to the extent that it felt it could sell, and it should not accumulate an enormous portfolio or a warehouse full of mortgages.

The Acting Chairman: Perhaps I could make a comment here that might be helpful, Senator Phillips. I think what you say about the danger of a conflict of interest is apropos, because that danger is bound to exist in a situation like this. On the other hand, if you take the background of the explanation and the comments which the superintendent has given here, together with the fact that a certain risk must, I suppose, always be taken in the selection of a board in a case like this, you have to balance that risk against the necessity of obtaining for the board the kind of knowledgeable people who can do the institution the most good.

At any rate, the remarks Senator Phillips has made this morning, being on record, will serve as notice to the Minister of Finance that, to the extent that it can be avoided, any possible conflict should be avoided.

I do feel, however, that in the context of what Mr. Humphrys has said there is a more than average possibility that there would be no conflict, providing the right people were selected.

Do you agree with that, Senator Phillips?

Senator Phillips: There is that possibility, but it is one that I feel is a very dangerous possibility to build into legislation. I would point out, Mr. Chairman, that a few years ago we passed legislation concerning interlocking directorships as between banks and trust companies.

The Acting Chairman: Yes.

Senator Phillips: To me, we are now crossing that legislation.

The Acting Chairman: Well, at the same time, what we want—certainly, the Senate would want this, I believe—is to have a public body, as this mortgage exchange corporation will be in the first instance since it will be a crown company, but also the have the expertise and input that comes from experts in the private sector by having them work within the four corners of this legislation.

That would be highly desirable; and, as I understand it, the purpose of this legislation is to involve and encourage the participation of the private sector in this very important economic aspect of Canadian life so that there will be greater access to funds for housing. I think it is highly desirable to get that kind of expertise. On this very committee you have a good example of that. We have a great many members—though they are not all here today—who are experts in the field of business. They know what business is and what the risks of business are. Of course, there is always the danger of conflict of interest with them, but at the same time I think that is greatly outweighed by the fact that they make a significant contribution to our deliberations. In the same way, the board of directors of this crown corporation, while it is a crown corporation, would benefit significantly from the selection of good people.

I believe, Senator Phillips, what you have done is to put up the warning flag. I suggest to you that that will come to the attention of the Minister of Finance and he will be very conscious of it.

Senator Phillips: I do not wish to belabour the point, but I felt that it should be emphasized very strongly at the committee stage; and of course, Mr. Chairman, you are aware of the fact that I have put up warning flags to governments before, of one of which you were a member, and I have found—in fact, I am sure that they kept slipping by my warning flags.

The Acting Chairman: I do not think we passed one of yours.

Senator Buckwold: The very fact that he was as permanent as it is obvious his government is, is an indication that they listened to those warnings.

Senator Phillips: Maybe I should not be giving so many warnings, then.

The Acting Chairman: Are there any other questions now, on this point of conflict? Have we dealt with that? Are there any other questions?

Senator Buckwold: I was going to ask two or three questions. First of all, the major opposition to the bill, as I read the committee reports from the other place, is, I suppose, with regard to two things: first, that it will not necessarily reduce interest rates to the extent that some people think housing interest rates should be reduced; and, secondly, that it might not necessarily make more funds available. Could I have some comment on that?

Mr. Humphrys: Well, I do not think that anyone who worked in the background of preparing this measure, or took part in the studies that went into it, expected that it would have any dramatic effect on interest rates. It is likely, however, that the operation of mortgage investment companies will be of interest to certain pools of investment funds that are not now turning to mortgages for investments. Thus they will serve to tap a new source of mortgage funds to the extent that the flow of mortgage funds can be increased. I think there would be a tendency to lower interest rates, or at least to operate in the opposite direction.

Senator Buckwold: But are the mortgage rates, to a degree, not predicated on bank prime rates? In other words, if the bank prime rate goes up, then mortgage rates will almost certainly go up as part of a relationship. . .

Mr. Humphrys: Well, I think they are still quite closely related to the supply of funds available, and I suppose this also affects the prime bank rate; but focusing on the mortgage market, I think the increasing supply of funds would certainly temper any drive to raise the rates, if it does not actually reduce them. Perhaps Mr. Wilson could answer that.

The Acting Chairman: I was going to ask if Mr. Wilson would like to comment on this.

Mr. A. D. Wilson, Executive Director, Central Mortgage and Housing Corporation: Over the years, obviously, all interest rates are interrelated to a degree. We have found, over the years, that the interest rate on housing mortgages is perhaps more closely related to the interest rates on long-term government bonds, or on corporate bonds, than it is to the bank prime rate, because the source of funds is somewhat different for long money in mortgages than it is for short money in prime bank lending. We have found that the deviation between the housing mortgage rate—and I am talking about the NHA rate, which generally speaking is fairly consistent in terms of the conventional market as well—the deviation since the rate was decontrolled, several years ago, has been, at the minimum, about 150 basis points above the federal long-term lending rate. At the time that the range reduced to that, mortgage money virtually dried up. The maximum. . .

The Acting Chairman: I wonder if you would explain that, for the record, to the committee?

Mr. Wilson: You mean the 150 basis points?

The Acting Chairman: Yes.

Mr. Wilson: Well, simply, if the federal long-term rate were eight per cent—and the federal long-term rate, of course, is an average rate of long-term securities issued

by the federal government—then you would expect that if the mortgage interest rate fell below nine and a half, the supply of mortgage money would virtually dry up and the rate, therefore, has very seldom fallen below about 150 basis points spread above the federal long-term rate. It has never gone higher than about 225 basis points—that is two and a quarter per cent; and generally, once it rides slightly above two basis points, or two per cent, above the federal long-term rate, the supply of money flowing into mortgages increases fairly rapidly to produce a balance that tends to stabilize roughly right at that level. These variations do occur. They do not generally occur on very short cycles, but they do occur on cycles as short as perhaps six, eight months. It would be very unusual, however, for us to have a swing from the top of the cycle to the bottom in such a short period.

Senator Buckwold: Fine. Now, I have just two more questions that actually involve Central Mortgage. I would guess that the largest portfolio of mortgages in the country is held by Central Mortgage and Housing.

Mr. Wilson: I think that is still true, yes.

Senator Buckwold: Is it the intention, in having this relationship between Central Mortgage and Housing and this exchange corporation, to unload some of CMHC's mortgages, or be active in it? Or will there be any relationship between the two?

Mr. Wilson: Well, I do not like the term "unload". It is obvious that the Federal Mortgage Exchange Corporation should have a stock in trade on the day it starts business, so it can act on both sides of the market from the beginning. We are obviously a source of a portfolio of a stock in trade at the outset, and so it is likely that it will draw its first supply of mortgages from our portfolio. This would be basically not from the point of view of the objectives of the Central Mortgage and Housing Corporation; in fact, it would not be to our corporate advantage to have this happen; it would basically show that the FMEC could really become effective at a perhaps earlier date than if it had to buy on the open market in order to establish a stock in trade.

The nature of the lending that Central Mortgage and Housing Corporation has been doing over the past several years has changed very substantially from that which it did, say, in the late sixties. In the late sixties we were lending large amounts of money on what you might call private sector terms, and we were doing so, of course, to bolster the supply of money because of a short fall from the private sector on normal market terms.

Since about 1970 two things have happened: Firstly, the private sector has enlarged its supply of mortgage money and has been able pretty adequately to meet demand since that time. Secondly, this has permitted us, as a policy agency of the government, if you like, to divert virtually our total lending into what has been loosely called, "the social housing field." That is where the lending is done at less than market rate to such things as co-operatives, or non-profit agencies, or federal government for public housing, or more recently, even to home owners at less than market interest rates. So the great part of the increase in our portfolio under current conditions would not be marketable through FMEC because it is on terms that are more favourable than market terms.

Senator Buckwold: But you would still maintain, I presume, the guarantees that you have on those mortgages that are given and handled by private corporations?

Mr. Wilson: Absolutely, and I would expect that the FMEC would deal pretty extensively, but not exclusively, with the NHA insured loans.

Senator Buckwold: Because you really have the guarantee of the government behind them, so there is no risk in buying the mortgage, as against an individual mortgage that may be carried out between buyer and seller.

Mr. Wilson: Well, there certainly is a standardization of the quality of risk, if you like, with an insured loan, that you do not get with an ordinary, conventional loan.

The Acting Chairman: And to the extent that the FMEC purchases mortgages or mortgage instruments from CMHC then, to that extent also, the CMHC will have additional funds available for the general purposes of the corporation.

Mr. Wilson: That is not quite correct, because our corporate setup with Finance requires that where a mortgage is prepaid or where we sell a mortgage, then we must in turn repay the debenture debt we owe to the government, so that it would go back into government funds and would be subject to control by government, and, of course, by Parliament before we could take that money and lend it again. We do not have a revolving fund.

Senator Phillips: You mentioned that you would be transferring certain mortgage portfolios to the FMEC. What type of mortgages would you be transferring, the subsidized ones or NHA?

Mr. Wilson: They would be direct loans made by the corporation. I would think it would be highly unlikely that we would sell mortgages at sub-market interest rates at the time they were made. Although theoretically, it would be possible for us to sell mortgages that we are writing today at 7 per cent, because of the fact that these are subsidized rates and we have special arrangements with the borrower to withdraw subsidization as his income changes, it would be virtually impossible for us to move that business into the private sector. I would think we would have to deal with that particular part of our portfolio which was made on private sector terms and carries no unusual mortgage or tied contractual relationships.

Senator Phillips: And the interest rates on those mortgages at the present time would be 9 to 10 per cent?

Mr. Wilson: We have no mortgages at 10 per cent. Our current rate for a loan on the private sector type of transaction is $9\frac{1}{2}$ per cent. We have very few of that type made. Our rate has varied over the past three or four years and has gone as high, I think, as $9\frac{1}{4}$ per cent and as low as $8\frac{3}{4}$ per cent. That is the type of portfolio we would have. Of course we would have some older portfolios at lower rates.

Senator Phillips: But nobody would buy them.

Mr. Wilson: Oh, at a discount, yes, but they would obviously have to be priced for today's market.

Senator Buckwold: Who would take that loss? Let us say that there is a mortgage that you have on your portfolio at 8 per cent and in order to move it through the exchange you would have to pay $9\frac{1}{2}$ per cent, who will pay the extra contractual interest rate?

Mr. Wilson: The details would have to be worked out between ourselves and the Department of Finance and FMEC. Obviously, the FMEC would have to get that mortgage money on their balance sheet at a market rate, so whether the loss is absorbed by the corporation or the Department of Finance will be a matter of dispute between the two of us.

Senator Phillips: That is the situation I anticipated from the start, so I want to ask you this. If you have a mortgage at the $9\frac{1}{2}$ per cent rate while the present NHA rate is higher than that, and you try to sell it, what discount are you offering?

Mr. Wilson: In selling mortgages to a private market and not just to a market lender, the market looks basically for a net yield, and that means the coupon rate of the mortgage less a service or administering charge for the administration of that mortgage. The coupon yield is normally anywhere from $1/10$ of 1 per cent to $3/8$ of 1 per cent higher than the net yield. So if you were selling today on a net-yield basis, you would have to discount to produce a net yield on the current market, from what I am told, of somewhere in the neighborhood of $9\frac{1}{2}$ per cent or slightly less.

Senator Buckwold: Well, then, somebody is picking up a loss here. Why would Central Mortgage dispose of its portfolio of lower interest rates? Granted that is all you are getting, and you may say, "Well, we will lose in any case because we should be getting more money for it," but would you be inclined to take that loss?

Mr. Wilson: Looking at it from the point of view of the straight capital position of the corporation, it would not be particularly in our interest to do so. However, the purpose of doing so, if, in fact, this were done and we rather suspect it would be desirable to do so—would be basically to put FMEC in a trading position at the outset, and it might well be worthwhile for government, whether it be in the corporation's balance sheet or in the broader sense, to absorb a capital loss on the basis of the book value of that asset now for the purpose of doing this. As you know, we have in the past sold mortgages in an attempt to develop a secondary market, and some of these were sold at a discount and some at a premium. So I think it might be desirable, not merely to keep us a prudent investor, but rather for the purpose of developing a secondary market which, in the long run, is still in the interest of housing generally, to take some capital loss in respect of some of those mortgages.

Senator Phillips: Mr. Chairman, the situation that disturbs me is this. The CMHC disposes of a mortgage to FMEC, and there was mention of $9\frac{1}{2}$ per cent as a possibility. In turn, FMEC, when they go to sell, I presume, are going to run into certain fees, commissions and so on, so there is a possibility of a further discount. Who will absorb this loss?

Mr. Wilson: Well, I would not expect that FMEC would deliberately sell at a loss on a consistent basis. Obviously, the market price will have to be able to absorb the cost of the marketing process, as is the case now in terms of bonds or any other securities. Basically, the stock exchange will only operate if there are buyers and sellers who are prepared to accept brokerage charges for the process of buying and selling.

Senator Buckwold: Do you consider this a good time to get into the business, or would it be better at a lower interest rate period?

Mr. Wilson: That is a dreadful question to ask a public servant! The market on mortgages seems to be fairly stable at this time, but whether it will continue to be so, I do not know any more than anybody else. We have a reasonably balanced market in terms of supply and demand in mortgages, and here I am talking of residential mortgages, and a fair stability of mortgage rate. There was a fairly rapid increase in the mortgage rate early in 1973 but that seems to have stabilized, and while there is a small fluctuation as between lenders under current conditions, that stability seems likely to continue for some little time.

Now, with a degree of stability in the market, I think it would be the best time to attempt to establish a secondary market, so that you are not attempting to speculate on what the market is going to be next week or the week after. You are, in fact, looking at the investment as an investment.

The Acting Chairman: It is a highly sophisticated field in which you are going to operate, and you are going to require expert knowledge of market conditions, and the buying and selling will depend a good deal on what those conditions are, isn't that right?

Mr. Wilson: Yes, and on expectations.

Senator Stanbury: If I understand the concept correctly, the intention is for the corporation to act more as a conduit than a trader, so it is a facilitating vehicle to allow pension funds, and people who do not have the expertise and the normal facilities, to participate in the mortgage field, and to do so more easily. I would have thought that the function of the corporation, once it gets going, would be very largely this job of making it possible for the smaller sources of funds to get into the field with the least possible effort. I appreciate that there are costs involved in that, but I would think that in some cases the question of profit or loss would be one which would balance out over a period of time, because sometimes there would be some small change in interest rates in your favour, and at other times there would be some small change in interest rates against you. That would balance out over a period of time, as long as you are just acting as a conduit and facilitating the easier exchange of mortgages in the market.

Mr. Wilson: I do not want to get into any controversy here. Basically the federal mortgage corporation is to be a service agency; it will in some sense be a conduit, as you suggest. If you have buyers and sellers lined up in equal numbers on each side of the table, it would be purely a conduit, simply a place to identify each other.

In fact, all transactions will not go through this. There is also a secondary market, to a small extent, where they accidentally run into each other, or where brokers bring them together. This will provide a stabilized place. It would be a conduit when they were balanced off. It would be a trader, in a sense, if, over a long period, there were more sellers than there were buyers. It would presumably build its portfolio up within the limited capacity it has. In that sense it could be a trader. But obviously, as you say, there will be times when they will make money on its trading transactions—hopefully that would be most of the time—but there will obviously be times when they will lose money.

The Acting Chairman: It is a broker, but it is a little more than a broker, in the sense that it could be buying for its own accounting.

Mr. Wilson: That is correct.

The Acting Chairman: What in fact happens in the registry office when the mortgages change? As these mortgages are traded in, is there a registration of assignment? What happens? Because, basically, a mortgage is a security on the basis of real estate.

Mr. Wilson: What has been happening in the market for some years—I am talking now about mortgages that are traded basically in blocks rather than as an individual mortgage sold from one person to another—has been that most of these mortgages are registered, likely in the name of the lending institution or agency that made the loan in the first place, that initiated the mortgage. That agency will probably—not necessarily but most likely—continue to administer that mortgage. It takes a computer to run a mortgage portfolio now. So that original lender is probably still servicing the mortgage. It may sell a couple of million dollars worth of mortgages in a block to a pension fund. The mortgages themselves are not, under normal circumstances, assigned with a registered assignment to the pension fund, where there is a declaration by the vendor that he holds these mortgages in trust for the pension fund, for the purpose of administering them, and for the purpose of distributing the interest earned on them. So there is very little legal work and very little registry office activity created.

The Acting Chairman: There would be none in that case.

Mr. Wilson: That is correct. That is the way that most of these transactions take place now, and I would expect that practice to continue.

Senator Phillips: Mr. Wilson, what is the usual percentage of legal fees paid in these cases? I want to make sure that my legal friends are looking after themselves well enough. Secondly, are there any real estate commissions paid in these real estate transactions?

Mr. Wilson: As the chairman has just suggested to me, on transactions done in the way I have suggested, under common practice there would be no legal fees paid.

Senator Phillips: He said there would be little legal work; he did not say that there would be no legal fees paid.

The Acting Chairman: I doubt very much if there would be any legal fee. There might be some overhead,

house fee, for advising how this thing would be set up. But once that advice were given and a form of declaration prepared, that would be the end of it. As Mr. Wilson has said, the mortgage still remains on the registry office books in the name of the original lender, and the original lender would act as agent for a purchaser, whoever that purchaser might be, down the line. I suppose the owner of the mortgage could change many times.

Mr. Wilson: This has been the situation. I would not say that ownership changes frequently, but it certainly can change more than once.

Mr. Hopkins: The beneficial ownership.

Senator Phillips: What is the usual legal fee paid by Central Mortgage and Housing in transferring these?

Mr. Wilson: At the time when we were selling mortgages—we are not selling mortgages now—we paid no legal fees. We did spend some in-house legal man-hours preparing some paper...

Mr. Hopkins: You did your own legal work.

Mr. Wilson: ...but we did our own legal work. That was done in part by lawyers, but mainly by clerical people.

The Acting Chairman: A legal fee would occur only in the event that, on the original transaction, the title had to be searched and certified, and the mortgage prepared, executed and registered. That has nothing to do with transactions that will involve FMEC. That is all prior to that. Those fees would have been absorbed by the original borrower.

Senator Stanbury: It really means that what you are developing is negotiable paper which is backed by a mortgage.

Mr. Wilson: In one sense, that is so.

Senator Buckwold: I wonder if we can get into this question of mortgage investment companies. To me, if this takes off, it is probably one of the most interesting parts of the bill. If we can get more people involved in making funds available, with the changes in what they call the pass-through in the income tax situation, it seems to me that it is really the impact of this bill that is of significant benefit to the country as a whole. Have you had an indication of interest on the part of the financial community in forming these mortgage investment companies? Has there been encouragement given in this regard?

Mr. Humphrys: Yes, Senator Buckwold, there has been very active interest expressed. We know of three or four projects that will start immediately, if Parliament gives its approval to this measure. They have been waiting, ready and organized.

Senator Buckwold: Could it be envisaged that, say, a trading company that had surplus funds could organize itself and utilize these funds, without the double income tax they would have now, if they put money into mortgages as part of their business? Take a wholly owned subsidiary of some kind? Do you envisage this happening?

Mr. A. E. J. Thompson, Director, Corporations and Business Income Division, Tax Policy Branch, Department of Finance: Any existing company can qualify for the conduit treatment if they can comply with the conditions set out on page 19 of the bill.

Senator Buckwold: Would that involve a separate incorporation or the formation of a subsidiary, or could it be done as part of the company's normal activity?

Mr. Thompson: If they change the nature of their operation so that they come within the asset and liability leverage requirements, as well as having the necessary number of shareholders, they could then become eligible for the conduit treatment.

Mr. Humphrys: They might run into difficulty in relation to the federal and provincial legislation applicable to companies in the mortgage lending business. If they borrowed for mortgage investment they would then be subject to the licensing provisions under the provincial Legislation as well as to the loan and trust companies acts.

Senator Buckwold: What if they just buy mortgages? Let us say, for example, that Senator Phillips, who is a multimillionaire—that is because he is a dentist!—has a company with either surplus funds or a good line of credit and wants to invest in mortgages through the exchange. If the company has a good line of credit, it can borrow money from the bank at 8 per cent and put it into mortgages at 9½ per cent, so it is not a bad deal. Would his company then qualify for the pass-through as far as income tax is concerned?

Mr. Thompson: Well, another point to bear in mind is that in order to qualify the company has to have at least 20 shareholders. In other words, there is supposed to be participation by a group of people. Part of the idea is that there will be a pooling of the funds of a large number of people.

Senator Buckwold: That would prohibit his company from making such investments, then. I can envisage many medium-sized companies having extra funds which they could pour into the mortgage market on the basis of this guaranteed form of investment and the tax benefits.

Mr. Thompson: I should point out, senator, that under the Income Tax Act you can already have your own private corporation to invest in mortgages. So, even without the passage of this bill, you can effectively get the pass-through treatment. It is a different mechanism, but you can effectively get the pass-through treatment with your own company now. What this bill adds is a method by which a group of people can be involved in a corporation of a more public nature and still benefit from the conduit tax treatment. That is the feature which will be added if this bill is passed.

Senator Phillips: What does the paid-up capitalization of a mortgage investment corporation have to be before it is allowed to commence operation?

Mr. Humphrys: Under federal law, such a company would have to have at least \$500,000 in paid-up capital. If it is a provincially incorporated company, it would

then come within the requirements of the province in which it was incorporated.

Senator Phillips: Mr. Thompson has said that it is possible at the present time to have a small mortgage company benefiting from the conduit or pass-through tax treatment. Can two or three such companies amalgamate and form a mortgage investment corporation?

Mr. Humphrys: If they were provincially incorporated companies and could comply with the provincial law applicable to mortgage lending companies, they could carry out an amalgamation and carry on business. So far as the Income Tax Act is concerned, as long as the company meets the criteria set out in the Income Tax Act it would rank for the conduit tax treatment.

I think it is important to note that this is not a special tax privilege in the sense that the intention is to put the people who participate in a MIC in the same position as they would be in were they putting their money directly into mortgages. In other words, this bill creates a new mechanism for pooling mortgage funds while still getting the same tax treatment.

Senator Buckwold: You pay single tax instead of double.

Mr. Humphrys: Yes.

Senator Phillips: Does a mortgage investment corporation have the same tax benefits as a credit union or a co-operative investing in mortgages?

Mr. Humphrys: No, the tax treatment is different. Perhaps Mr. Thompson could explain.

Mr. Thompson: The tax treatment is different, although in the end it may amount to much the same thing. A credit union can deduct from its income interest payments and interest rebates paid out to its members, so the end result could be much the same. The tax provisions are somewhat different.

Senator Phillips: Would the same apply to a co-operative investing in mortgages?

Mr. Thompson: Yes, although if it was mainly an investment operation I suppose it would more likely be a credit union rather than a co-operative. The answer would be substantially the same. I do not think co-operatives would ordinarily get into investing on a very large scale.

Senator Phillips: Co-operatives in Eastern Canada do invest in mortgages. Perhaps you could explain to the committee the difference between the tax benefits provided to a mortgage investment corporation and those provided to a credit union or co-operative under this bill.

Mr. Thompson: A credit union is generally taxable in the same way as is a corporation. The main unique feature is that credit unions can deduct any interest rebates and adjustments, not only to distributors but also in respect of shares, because their shares are more akin to deposits than are shares of the normal kind. So in the end result, the credit union can distribute all of its interest income as interest or rebates to its members, thereby wiping out its income. It would have the income reported at member level, which is substantially the same effect.

The main important feature with respect to the tax treatment as it relates to co-operatives is the deductibility of patronage dividends. They would normally relate more to ordinary business operations—not financial operations, but more to the purchasing and selling of goods. To the extent that co-operatives distribute their income as patronage dividends to members, that income is taxed at the member level rather than once at the co-operative level and a second time upon later distribution.

Senator Buckwold: How is it handled if there is a patronage dividend declared which is then reloaned back to the co-operative? In other words, there is no cash transaction. That is the way most of the larger co-ops seem to operate. Is that then taxable to the individual?

Mr. Thompson: I believe it is.

Senator Buckwold: It would be taxable to the individual even though he did not get the money? He would be building up an estate which eventually would be his.

Mr. Thompson: I believe that is so.

The Acting Chairman: It comes under the same principle as does the re-investment of income in a mutual fund, I take it. In other words, you pay the tax on the income as it is declared even though you do not receive the money.

Mr. Thompson: It is a similar principle to that, yes. I believe there is 15 per cent tax withheld now on patronage dividends over \$100.

Senator Buckwold: Getting back to mortgage investment companies, would their losses or gains in their portfolio, as against interest revenue, be considered capital gains or part of their business operation?

Mr. Thompson: This is on their mortgages?

Senator Buckwold: Yes.

Mr. Thompson: It will depend to a great extent on the circumstances of the way in which the corporation carries on its affairs, and that would be a matter of the view of the Department of National Revenue. If there was a dispute it might have to go to court. By and large, I believe it is fair to say that National Revenue would think that as the mortgage investment corporation is envisaged, any discounts or premiums on the mortgages would likely be taken into account in computing their income, because there is so much in the going about and investing mortgages in an organized way, so it is part of the operation.

Senator Buckwold: I think what you are saying is that basically a mortgage investment company that was involved to some extent in the mortgage market would treat its discounts, gains or premiums as income?

Mr. Thompson: That is right. It is just part of its operation.

The Acting Chairman: Are there other questions?

Mr. Humphrys: Perhaps I could make one comment, Mr. Chairman. There is a difference between the credit

unions and the mortgage investment companies, in that the share capital of a mortgage investment company is not withdrawable. If a shareholder wants to get out, he has to sell his shares.

The Acting Chairman: Are there other questions, honourable senators?

Mr. Humphrys: Lest my earlier comment has left any misunderstanding, I should say that in my reference to banks and bank directors and the conflict of interest question that Senator Phillips raised, the bank director is required to absent himself when any matter is being dealt with in which he is interested.

The Acting Chairman: I think he would do that, even if he were not required to do so.

Senator Buckwold: I am sure that in any conflict of interest that took place in the board of directors of our new exchange corporation the director would declare himself.

The Acting Chairman: Of course, as is done in Parliament.

Honourable senators, shall I report the bill without amendment?

Hon. Senators: Agreed.

The Acting Chairman: Thank you, honourable senators. I thank Mr. Humphrys, Mr. Wilson, Mr. Thompson and Mr. Champion. This has been very helpful indeed.

The committee adjourned.



First Session—Twenty-ninth Parliament

1973-74

THE SENATE OF CANADA

STANDING SENATE COMMITTEE
ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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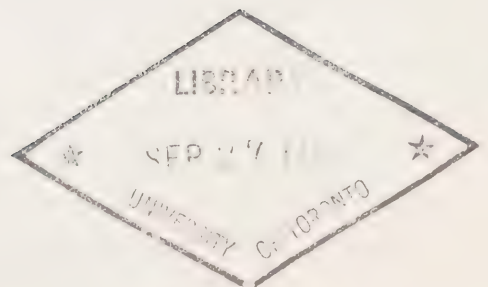
Witnesses

- Aitken, H. T., President, Export Development Corporation
- Beach, R. J., President, Beach Industries Limited; Chairman, Membership Committee, Canadian Manufacturers Association
- Becket, R. W., Q.C., Vice-President, Secretary and General Counsel, Canadian International Paper Company
- Bennett, G. L., Deputy Minister, Customs and Excise, National Revenue Dept.
- Biddell, Jack, Treasurer, Committee for an Independent Canada
- Brisset, Jean, Q.C., Counsel, Shipping Federation of Canada; Protecting and Indemnity Association
- Bruce, D. I. W., Q.C., Vice-President, Secretary and General Counsel, Westinghouse Canada, Limited; Member, Legislation Committee, Canadian Manufacturers Association
- Burke, J., Managing Director, Canadian Chamber of Shipping
- Cameron, G. W., General Manager, Independent Petroleum Association of Canada
- Chretien, Hon. Jean, Minister of Indian Affairs and Northern Development
- Christopher Barron, Immediate Past Chairman of Board of Governors, Toronto Stock Exchange
- Cohen, M. A., Assistant Deputy Minister, Tax Policy Branch, Finance Dept.
- Crosbie, H. T. Allan, Assistant Vice-President, Wood Gundy Limited
- DeCoster, Robret, Deputy Minister, Industry and Commerce Dept., Province of Quebec
- Friesen, F. Dufferin, Legal Advisor, Regional and Departmental Services, Justice Dept.
- Garland, H. E., Director General, Tax Policy Branch, National Revenue Dept.
- Gibson, F. E., Director, Legislation Section, Justice Dept.
- Gillespie, A. W., Minister of Industry, Trade and Commerce
- Grey, R. de C., Assistant Deputy Minister, Tariffs, Trade and Aid Branch, Finance Dept.
- Gualtieri, R. D., Special Adviser on Foreign Investment to Deputy Minister, Industry, Trade and Commerce
- Hay, William, Executive Vice-President, Trizec Corporation
- Humphrys, R., Superintendent of Insurance
- Ingram, Robert J., General Manager, National Association of Canadian Credit Unions; General Secretary, Canadian Cooperative Credit Society Limited
- Kim, S., Director, National Parks Branch, Indian and Northern Affairs Dept.
- Kimber, J. R., Q.C., President, Toronto Stock Exchange
- Kniewasser, Andrew G., President, Investment Dealers Association of Canada
- Lazar, H., Adviser, Foreign Investment Policy, Industry, Trade and Commerce Dept.
- Lalonde, Fernand, Deputy Minister, Financial Institutions, Companies and Cooperatives, Province of Quebec
- Linton, O. M., Chief, Enforcement and Operations, Inspection Branch, Fisheries and Marine Service, Environment Dept.
- McDiarmid, Dr. D. R., Member, Alpine Club of Canada
- Macdonald, Garth, Canadian Institute of Public Real Estate Companies
- Macdonald, William A., Q.C., Law firm, McMillan, Binch, Toronto
- McIsaac, D. J., Head, Marine Rail Transportations, Customs and Excise, National Revenue Dept.
- McKeough, Hon. W. Darcy, Parliamentary Assistant to Premier of Ontario
- Marier, Andre, Economic Advisor, Province of Quebec
- Meech, R. C., Q.C., Counsel, Investment Dealers Association of Canada
- Morgan, R. T., Vice-Chairman, Toronto Stock Exchange
- Mullally, John, Director, Provincial and Federal Affairs Branch, Fisheries and Marine Service, Environment Dept.
- Nicol, J., Director General, National Parks Branch, Indian and Northern Affairs Dept.
- Pacaud, G. E. A., Vice-President and Secretary, M.E.P.C. Canadian Properties Limited
- Phillips, M. P., President, Yukon Chamber of Mines
- Ruben, R. F., President, North Canadian Oils Limited; Independent Petroleum Association of Canada
- Salter, C. R. B., Q.C., Executive Director, Companies Division, Ministry of Consumer and Commercial Relations, Province of Ontario
- Short, R. A., Chief, Corporation and Business Income Division, Tax Policy Branch, Finance Dept.
- Sinclair, Dr. George, President, Sinclair Radio Laboratories Limited
- Smith, G. J., Member, Whitehorse Chamber of Commerce
- Stanbury, R. G., Minister of National Revenue
- Stevens, J. Hugh, Chairman, Export Committee, Canadian Manufacturers Association; President, Canada Wire and Cable Limited
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- Topping, F. W., President, Topping Electronics Limited
- Trent, Professor John, Chairman, Policy and Research Committee, Committee for an Independent Canada
- Turner, Hon. John N., Minister of Finance
- Weir, E. K., Law Firm, McMillan, Binch, Toronto
- Wilson, A. D., Executive Director, Central Mortgage and Housing Corporation

—Worrall, William J., Barrister and Solicitor, British
Columbia

—Yates, A. B., Director, Northern Economic Develop-
ment Branch, Indian and Northern Affairs Dept.

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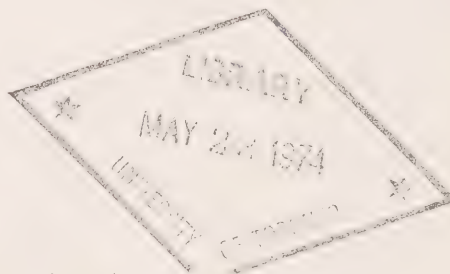
SECOND SESSION—TWENTY-NINTH PARLIAMENT

1974

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

Issue No. 1



THURSDAY, APRIL 25, 1974

First Proceedings on Bill C-6,
intituled:

“An Act to amend the National Parks Act”

(Witnesses: See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Beaubien	Laing
Blois	Laird
Buckwold	Lang
Connolly (<i>Ottawa West</i>)	Macnaughton
Cook	*Martin
Desruisseaux	McIlraith
*Flynn	Molson
Gélinas	Smith
Haig	Sullivan
Hayden	van Roggen
Hays	Walker—(20)

**Ex officio* members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 23, 1974:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Laing, P.C., seconded by the Honourable Senator Cook, for the second reading of the Bill C-6, intituled: "An Act to amend the National Parks Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Martin, P.C., that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER
Clerk of the Senate

Minutes of Proceedings

Thursday, April 25, 1974.

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to consider the following:

Bill C-6 "An Act to amend the National Parks Act".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Cook, Flynn, Gelinas, Molson and Smith. (7)

Present; not of the Committee: The Honourable Senator Cameron. (1)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

WITNESSES:

Indian and Northern Affairs Department:

Mr. J. I. Nicol,
Director-General,
Directorate—Parks Canada;

Mr. S. F. Kun,
Director,
National Parks Branch.

The Committee then proceeded to the examination of Bill C-6 and after discussion it was *Agreed* that the witnesses bring to the attention of the Minister the concern of the Committee with respect to Clause 2 of the said Bill.

At 10.15 a.m. the Committee adjourned its consideration of the said Bill until Wednesday, May 1, 1974 and proceeded *in camera* to the discussion of other Committee business.

At 10.30 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Thursday, April 25, 1974.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-6, to amend the National Parks Act, met this day at 9.30 a.m.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us this morning Bill C-6, an act to amend the National Parks Act. As witnesses we have: Mr. Kun, Director, National Parks Branch; and Mr. Nicol, Director General, Parks Canada. Mr. Nicol, you may open the proceedings.

Mr. J. I. Nicol, Director General, Parks Canada, Department of Indian and Northern Affairs: Honourable senators, the bill was before this committee on a previous occasion. The amendments made in the other place are acceptable to my minister. They cover some of those things which some senators were concerned about the last time we were here. These were notably in the form of prior advice of intent in the case of clauses 2, 10 and 11, and a process of independent review of the department's decision and actions, whether taken by itself or in concert with the provincial government.

I think the amendments so made meet the questions that were raised in this committee the last time we were here. The other clauses were not changed. One was added to section 6 of the act. This was not in the original bill. The effect of this is to remove the phrase "lands of Indians." The thought behind this was that "lands" should not be identified separately as "lands of Indians," and the phrase was dropped. That phrase in the section has never been used during the life of the act, which was originally passed in 1930.

The Chairman: In doing that, you have not taken anything away?

Mr. Nicol: No.

The Chairman: You have only broadened the language.

Mr. Nicol: That is correct, sir.

The Chairman: Senator Flynn, you raised a question in the Senate on second reading and indicated that you were going to raise it in committee. Would you care to develop that point now?

Senator Flynn: Yes, Mr. Chairman. It is in connection with the procedure set out in clause 2 of the bill, where a new section 3.1 is added after section 3 of the act.

It provides for the Governor in Council to meet certain requirements before a proclamation can be issued establishing a new park, or enlarging one, if I am not mistaken.

It is provided that notice shall be given in the *Canada Gazette* 90 days before, following which the matter shall be submitted to the Standing Committee on Indian Affairs and Northern Development in the other place.

The standing committee hears the notices and makes a report to the house concurring in the intention to establish the park or disapproving the idea. If it disapproves, the matter rests there, but if there is a positive report the Governor in Council may then proclaim the establishment of the new park.

The Senate is entirely left out of this procedure. I can understand how it occurred. It is certainly not the fault of the department. It is because the amendment was devised in the committee of the other place.

I suggest that if there is a negative report from the standing committee of the other place, the matter should rest there, just as though the decision was not passed. But if there is a positive report, it seems to me that the Senate should be called upon to concur in the recommendation of the committee of the other place and, in fact, of the other place itself.

The Senate has always been a forum for airing grievances. It seems to me that this principle should be respected in giving a voice to the Senate in the case of a positive report from the standing committee of the other place.

I have not drafted an amendment. I would like to hear the views of other honourable senators.

The Chairman: Are you suggesting that there should be an amendment to this section requiring that such a proclamation be approved by the Senate?

Senator Flynn: Yes. My idea is that after subsection (5) of section 3(1) there should be reference to the Senate, that the decision of the house approving the proposed proclamation be referred to the Senate and to a committee of the Senate. The committee would then either concur or disapprove the intended proclamation.

The Chairman: I would like to hear the views of other honourable senators. I should call the attention of the committee to one factor, that another bill—the energy bill—dealt with this principle of procedure by proclamation. The bill in its original form required the approval of the Commons and the Senate. In the Commons the reference to the Senate was struck out, and the bill went through.

That is why, in considering our course of action today, there is the question of whether we should again invite that kind of confrontation or whether there is another and more logical and reasonable way of dealing with this bill to achieve the same result.

Perhaps I should develop that point. My thought is that the bill really creates a system of national parks. It then goes on to provide that if an addition to that list is significant in relation to the park, you can proceed to provide for more parks not by legislation but by proclamation. That proclamation goes through the procedure of advertising, going to a committee of the House of Commons, and coming back to the Commons for approval, without any reference to the Senate.

It occurs to me that if legislation is necessary to create a system of parks, when additional parks are going to be provided of any significant area, at any significant cost, or whatever it might be, it should be done by legislation and not by proclamation.

Senator Beaubien: That would include us.

The Chairman: If an act of Parliament, in which the Senate participates, is necessary to create it and you are dealing significantly with the quantum, then it should be done by legislation. That is my view on the matter. This may be a question of policy, so I would not expect the representatives from the department to venture any comment as to what the minister's view in relation to this would be.

It strikes me that while we should discuss the pros and cons of proclamation in these circumstances, certainly the proclamation method should be limited to insignificant additions by way of expanding the area of an existing park. What I am trying to avoid, if possible, knowing the attitude of the other place now as it exhibited itself in connection with the energy legislation, is a confrontation on this issue, particularly when it strikes me that such a confrontation is not necessary since we can amend the bill now before us. We do not have to amend it in such a way as would make it necessary to consult the Senate, but we can limit the language of the bill to any additions which are not significant.

I do not think I should ask the representatives of the department who are here this morning for their views on that, as I think it is a policy decision. However, when the view of the committee in this connection is ascertained, we can discuss it with the minister. If we do not complete our study of this bill this morning, then we can adjourn it until next week and ask the minister to appear and explain his position.

I now invite comment from the committee.

Senator Molson: Perhaps the Law Clerk can advise us, Mr. Chairman, as to whether or not this manner of dealing with legislation setting out the method by which something will be dealt with in Parliament in detail—the standing committee shall meet without delay and hear witnesses, and they will get up in the morning and go to bed at night, and so forth—is commonly used? I do not recollect seeing legislation that spells out that the House of Commons will do this and that.

The Chairman: You mean this proclamation method?

Senator Molson: Yes. It is usually "Parliament," is it not—not, "The House of Commons shall do this and the House of Commons shall do that"?

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Perhaps I might comment, Mr. Chairman. It is an extraordinary procedure. It is fairly new.

Senator Molson: It has not been done, has it?

Mr. Hopkins: It has been done, but only recently.

Senator Flynn: It was done, to some extent, in connection with the corporate tax legislation where 60 members of the House of Commons may force a debate on the continuation of that legislation. If there is a resolution adopted saying the legislation should be amended in a certain way, then the Governor in Council is obliged to bring in legislation in accordance with that resolution.

Senator Molson: But then the Senate gets a crack at the legislation.

Senator Flynn: Yes.

Senator Molson: But that is not the case here.

Mr. Hopkins: It is a manifestation of the same thing.

Senator Molson: What surprises me, also, is setting out the method by which the House of Commons will do this. It seems to me that is rather unusual.

Senator Cook: Following on from Senator Molson's comments, what happens if the standing committee does not meet without delay?

Senator Molson: Exactly.

Mr. Hopkins: I think that is covered, because it says if it is not approved, then the publication may not issue.

Senator Flynn: Yes, that would prevent the proclamation from taking place.

Senator Cook: That is not the intent of Parliament; the intent of Parliament is that it should be considered.

Mr. Hopkins: I agree with Senator Molson that it is unusual.

The Chairman: Proposed section 3.1(5), at the bottom of page 2 of the bill, indicates where the proclamation is not to issue, so you are putting all the authority in the Senate if the Senate committee does not approve of the report.

Senator Molson: The House of Commons committee.

The Chairman: That states:

In the event the House of Commons concurs in a report disapproving of the proposed proclamation or does not concur in a report approving of the proposed proclamation, the Governor in Council shall not issue the proclamation.

It is an extraordinary procedure.

Senator Molson: It is changing the character of legislation.

The Chairman: It is. That is why I feel that rather than run head on into that issue, the limitations on the use of the proclamation should be where there are relatively insignificant additions to be made to an existing park; otherwise, it should be done by legislation.

On that point Mr. Nicol has some comment that he would like to make. He feels there are some things he can say in that connection.

Mr. Nicol: When this bill was before your committee in the last session there was some concern expressed in connection with clause 2, which speaks only of additions to existing national parks, that the provincial and federal governments could jointly create a very significant addition to a national park without the public being aware of that being the case. The same concern was voiced in the committee of the other place. There were a number of suggestions for an independent review, some of which followed along the lines of the independent review which takes place under the Expropriation Act. The members of the committee of the other place came to the conclusion that, along with the additional notices being given prior to proclamation, an independent review could take place in the form set out in the amending bill.

The whole thrust here was to have a review of the addition outside of the provincial and federal governments, and this is the form which they concluded would provide for that independent review. They took cognizance of the points which had been raised by our officials in both committees to the effect that there were very minor additions of two, five or ten acres which had no significance in a park of 1,800 square miles. This, really, was the thought process that went into both committees.

The Chairman: Are there any questions?

Senator Cook: I do not think that alters the position very much, Mr. Chairman. It is a good explanation, but I must say I am very taken, at first thought, with your suggestion. After all, if it is a significant addition, then we should obtain the position of the public on it.

The Chairman: This proclamation method should only be available in the case of an insignificant addition; otherwise, it should require legislation.

Senator Gelinás: We would have to define the words "significant" and "insignificant."

The Chairman: The addition would be to an existing national park, and the natural limitation, I should think, would be the extent or percentage of the geographic area involved. This is where the department might be of some assistance. I am not suggesting that we draft an amendment this morning, but I think we should indicate our thinking. If that, in fact, is the thinking of the committee, then we should ask these officials to go back and explain our position to the minister. We would like to have them express their views.

Senator Gelinás: May I ask the witness a question? We are talking about adding land to the present parks. How about deleting or returning land? Has it ever occurred?

Mr. Nicol: This was deliberately left out of the bill, advisedly. The minister and the government have taken the stand that if there is to be any deletion of any kind it must come before Parliament as a bill, which can then be debated. Clause 2 was designed to facilitate minor, and sometimes major, amendments, or significant additions to the park.

The Chairman: And the language they use, Senator Gelinás, is, "... where the area of the lands described in the proclamation"—that is, the proclamation relating to an addition—"is significant in relation to the park,"—

that is, to the park in respect of which the addition is being made. I think the language should just be in the reverse, so as to preserve the importance of the position of Parliament in dealing with this.

Senator Beaubien: Agreed.

Senator Cook: Could I ask a general question, anticipating what arguments might be advanced? We are coming into a new season for the operation of parks. Is there any urgency for this bill to be passed in view of your operation of the parks in this season? Is there anything in the bill which you want immediately?

Mr. Nicol: Yes. The housekeeping items, which have not been the subject of much comment in either committee, are very helpful to us. The other thing is that those parks which are identified in the other clauses in the bill do require the protection of the National Parks Act, and the sooner we get it the better.

The Chairman: They have not had it so far.

Mr. Nicol: They have not had it so far.

The Chairman: And they have been doing all right.

Mr. Nicol: We have not been doing all right, otherwise...

The Chairman: ...you might have been here sooner?

Mr. Nicol: Well, the last time amendments to this act were passed was in 1957, and we have, over that period of time, examined the boundaries of a number of existing parks with a view—and I think the explanation was given to the committee at the previous sessions—to bringing a rational boundary into effect rather than a surveyor's dream of very nice, straight lines; and this is true of a number of parks across Canada. Some of these additions are included in the description. Prince Edward Island, for example, has certain additions listed in the description. They come under one of the clauses, and I do not know whether it is 7 or 8.

The Chairman: I like your language, Mr. Nicol, about establishing the boundaries of the parks in a realistic way rather than following a surveyor's dream of where they should be.

Senator Flynn: Mr. Chairman, your suggestion probably would require an amendment to clause 2; but, on the other hand, by clause 10 we give the Governor in Council the right to proceed under the procedure set out in clause 2 with regard to five new parks there, in British Columbia, New Brunswick, Quebec, Newfoundland and Ontario, and the territory is not defined here. It would have to be decided by the department, with the concurrence, of course, of the province. But then the real procedure of establishing the park would come under the exclusive control of the Commons; we would be left out entirely, as far as these five intended parks are concerned. I agree with you that we should avoid confrontation. I am quite satisfied that they would not accept an amendment which would only deal with the status of the Senate; but we have got to be realistic. We are now giving them exclusive jurisdiction over the establishment of these five new parks.

Senator Cook: Is that quite the effect of clause 10?

Senator Flynn: Yes.

Senator Cook: I do not think it is. Well, you may be right; I am not quite sure. It is a different subsection 2.

Senator Flynn: I am not too sure. Would you say the establishment of these two parks would not require the approval of the standing committee?

Mr. Nicol: There is a significant difference, Senator Flynn, between clauses 2 and 10. Clause 2 has some futurity to it. It is basically that any additions, as they occur in the future, would follow the process as drafted in clause 2.

With regard to clause 10, the five parks mentioned are already subject to a federal-provincial formal agreement. They have had very wide publicity on the definition of the boundaries, and in the case of the one in Ontario the process has been delayed while full consultations concerning the rights of the Indians in that area are taking place. The proclamation will not take place until we have the legal description, and all of the lands transferred from the provincial government to the federal government. In the case of (a) the Part III lands have not yet been transferred. In the case of (b) the lands are in the process of transfer now. In the case of (c) the lands have been transferred.

The Chairman: But, Mr. Nicol, in these cases in clause 10, provision is being made in this legislation to do these things.

Mr. Nicol: This legislation will approve these parks.

The Chairman: Yes. And it is up to the department, according to the procedures that are laid down, to proceed with the acquisition, and develop these parks and the definition of boundary lines, et cetera; but the one in clause 2 is dealing with additions to existing parks.

Mr. Nicol: That is right.

The Chairman: And they are using the proclamation method, and I think, if the addition is of any significance, it should be by legislation. That is my feeling.

Mr. Hopkins: But clause 10 stands by itself. It does not have to follow the procedure.

Mr. Nicol: No.

Senator Flynn: This is strange, however, because in clause 2 we say that if you have an existing park you have got to do this, that, and the other thing.

Mr. Hopkins: After it is established.

Senator Flynn: But if you establish a new park under clause 10 you have to do certain things, but not the reference to the standing committee of the other place.

The Chairman: That is right.

Senator Flynn: It would be easier for the department to establish an entirely new park, which may be a very wide area, without the concurrence of the committee of the other place.

The Chairman: But, senator, it is only under clause 10 in a general way. . .

Senator Flynn: I know.

The Chairman: . . . that the locations are dealt with.

Senator Flynn: Yes.

The Chairman: But the selection of the particular area is dependent on what the department does.

Senator Flynn: The counties of Champlain, and St. Maurice in the province of Quebec, I can assure you, are rather a wide area. I know it is an area very close to the minister, but . . .

Senator Molson: Is there any difference between paragraph (a) in clause 10(2) and paragraph (a) of proposed section 3.1:

(a) clear title to the lands described in the proclamation is vested in Her Majesty in right of Canada;

Is that the same in clauses 2 and 10?

Mr. Nicol: Yes.

The Chairman: No.

Senator Molson: The title does not have to be vested already in the Crown, does it?

Mr. Nicol: Yes. You have clause 2—section 3.1:

(a) clear title to the lands described in the proclamation is vested in Her Majesty. . . ;

Senator Molson: I see. It is the same in both.

Mr. Nicol: That is right, sir.

Senator Beaubien: So it is the same in both.

The Chairman: Mr. Nicol, do you understand what the problem is insofar as we are concerned? You could wait for the transcript, which should be available very shortly, or we may be able to give you one of the carbon copies, which will be typewritten, to set out the proceedings here today. If you have the opportunity to discuss this and you receive instructions, your minister may wish to come back, and we will sit again on Wednesday next.

Some hon. Senators: Agreed.

The Chairman: If there is any further clarification you need of what concerns us, now is the time to ask for it.

Mr. Nicol: Mr. Chairman, in clauses 10 and 11, Parliament by passing this bill approves these parks. The same device was used in 1957, in the case of Terra Nova National Park. The park was approved by amendment of the act. The legal description of Terra Nova appears in this amendment. The change in the process here in clauses 10 and 11 is that, instead of parks being automatically proclaimed by the passage of this bill, they will be proclaimed when the legal description is available.

Senator Cook: But these clauses do not exclude the Senate because they do not include the House of Commons.

The Chairman: The remarks we made this morning were in relation to clause 2 and not clauses 10 and 11.

Senator Flynn: I would like to know why you accept the principle of referring to the standing committee of the House of Commons the intention to enlarge an existing park, and you do not provide for the same procedure with regard to the creation of new parks. Why this difference? It seems to me that this is not logical.

Senator Cook: But they are already created.

Senator Flynn: But the creation is something much more important than the enlargement of an existing park.

Mr. Nicol: Under clause 10 the boundaries are defined, but the lands are not fully transferred. In clause 11 the full legal description is included in the appendix.

Senator Flynn: Yes, in clause 5, but not in clause 10.

Mr. Nicol: Not in clause 10. The boundaries have been made completely public, but all of the lands have not been transferred as yet.

Senator Molson: There have to be public hearings on that still.

Mr. Nicol: There have to be public hearings on the land called for in clause 10(3).

Senator Smith: I would like to ask Mr. Nicol what the present legal status of Kejimikujik Park is. I was looking for the reference.

Mr. Nicol: Clause 7(2) covers Kejimikujik.

Senator Smith: At what time was legislative authority given for Kejimikujik?

Mr. Nicol: This bill provides for it and also for the legal description.

Senator Smith: Where do I find the approval for Kejimikujik?

Mr. Nicol: This bill approves it.

Senator Smith: Is it because we approve the schedule?

Mr. Nicol: Approval of clause 7(2) and the schedule will effect the establishment of Kejimikujik National Park on a formal basis when the bill is passed.

The Chairman: If there are no further questions, does the committee approve of the course we have discussed?

Hon. Senators: Agreed.

The Chairman: Mr. Nicol, if you are not too clear, even when you get the transcript, all you have to do is get in touch with me or the clerk of the committee or our law clerk and we will provide anything further by way of explanation as to what our position is.

Mr. Nicol: I understand the committee's concern is with clause 2.

The Chairman: That is right.

Senator Flynn: And the difference in procedure.

Mr. Nicol: And the committee is concerned that significant additions to national parks should be in the form of legislation.

The Chairman: That is right.

Mr. Nicol: Rather than the process set out in the present bill. Am I correct?

Hon. Senators: Agreed.

Senator Cook: It should be approved by Parliament as a whole.

The Chairman: Then we will adjourn this morning until Wednesday morning next at 9.30.

Mr. Nicol: I take it that there are no questions on the other clauses?

The Chairman: No.

The hearing is adjourned.



SECOND SESSION—TWENTY-NINTH PARLIAMENT

1974

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 2

WEDNESDAY, MAY 1, 1974

First Proceedings on

“The advance study of proposed legislation respecting the Combines Investigation Act, competition in Canada or any matter relating thereto.”

(Witnesses: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Beaubien	Laing
Blois	Laird
Buckwold	Lang
Connolly (<i>Ottawa West</i>)	Macnaughton
Cook	*Martin
Desruisseaux	McIlraith
*Flynn	Molson
Gélinas	Smith
Haig	Sullivan
Hayden	van Roggen
Hays	Walker—(20)

**Ex officio members*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 2, 1974:

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Bourget, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and report upon any bill relating to competition in Canada or to the *Combines Investigation Act*, in advance of the said bill coming before the Senate, or any matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.”

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, May 1, 1974.

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to consider the following:

“The advance study of proposed legislation respecting the Combines Investigation Act, competition in Canada or any matter relating thereto.”

Present: The Honourable Senators Hayden, (*Chairman*), Beaubien, Blois, Buckwold, Connolly, (*Ottawa West*), Cook, Desruisseaux, Flynn, Gélinas, Haig, Laing, Macnaughton and Molson. (13)

Present; not of the Committee: The Honourable Senators Aird, Heath and Manning. (3)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel; R. J. Cowling, Legal Counsel and J. F. Lewis, Advisor.

WITNESSES:

The Canadian Manufacturers' Association,

Mr. Harry G. Hemens, Q.C.,
Vice-President, Secretary and General Counsel,
Du Pont of Canada Limited, Montreal.
Member, CMA Legislation Committee.

Mr. D. I. W. Bruce, Q.C.,
Vice-President and Secretary,
Westinghouse Canada Limited, Hamilton.
Member, CMA Legislation Committee.

Mr. R. Snelgrove,
Vice-President and Secretary,
Massey-Ferguson Industries Limited, Toronto.
Member, CMA Legislation Committee.

Mr. B. R. McPherson,
President, Gibbard Furniture Shops Limited,
Napanee.
Member, CMA Legislation Committee.

Mr. G. C. Hughes,
Manager, CMA Legislation Department. Toronto.

Mr. D. H. Jupp,
Ottawa Representative CMA.

The Committee proceeded to the consideration of the subject-matter and the examination of the witnesses.

After discussion, the Committee adjourned its consideration of the above matter until Wednesday, May 1, 1974.

At 12.10 p.m. the Committee adjourned until 12.30 p.m. this day.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, May 1, 1974.

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to examine and consider any bill relating to the Combines Investigation Act in advance of the said bill coming before the Senate, or any matter relating thereto.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, this morning we are commencing our hearings on the reference made by the Senate to this committee with respect to the substance of the proposed combines investigation legislation. Appearing before us this morning are representatives of the Canadian Manufacturers' Association. I am glad to see we have quite a few members of the committee in attendance.

I have read the brief submitted by the Canadian Manufacturers' Association, as I am sure all honourable senators have, and I might say they have done a good job of coverage. The opening statement will be made by Mr. Hemens, and when he takes his place beside me I will have him introduce his "supporting cast."

Would you come to the dais now, Mr. Hemens, and introduce your supporting membership in the order in which they are sitting?

Mr. Harry G. Hemens, Q.C., Member, Legislation Committee, Canadian Manufacturers' Association: Thank you, Mr. Chairman. On my immediate right is Mr. Bruce; next to him is Mr. McPherson; next to him Mr. Snelgrove; then Mr. Hughes; and next to Mr. Hughes is Mr. Jupp.

Mr. Chairman and honourable senators, we thank you for giving us the opportunity to submit our views to this committee today and to answer any questions which honourable senators may care to put to us.

[*Translation*]

Honourable Senators, at the outset of my remarks I would like to thank you for this opportunity to appear before you, but in view of the complexity of this matter, I will, with your permission, continue my remarks in English.

[*Text*]

Honourable senators will find that our submission deals only with those provisions which we suggest require further consideration and amendment. There are, however, many other provisions on

which we do not comment. The consumer protection provisions relating to bait and switch selling, referral selling and permit selling are supported by this Association. Furthermore, we recognize that the provisions dealing with foreign judgments, laws and directives are a serious attempt by the government to overcome the extraterritorial application of foreign laws in Canada. We support moves in this direction.

Our submission deals with the many subjects outlined in its table of contents. You will observe that most of our submission deals with the proposed power of the Restrictive Trade Practices Commission to deal with trade practices known as refusal to deal, exclusive dealing, market restriction and tied selling. We have a lengthy appendix on this subject, and our views are given in outline on pages 3, 4 and 5.

I would refer you to sections 31.2 and 31.4 as they would be amended by Bill C-7. These are the sections that give the Restrictive Trade Practices Commission power to deal with refusals to deal and exclusive dealing, market restriction and tied selling.

Let me turn first to refusals to deal. Before the commission can make an order it must find four facts. The first fact is that a person, whom I will call the complainant, was adversely affected in his business or is precluded from carrying on his business because of his inability to obtain supplies of the product. The second fact is that the complainant must be willing and able to meet the supplier's usual trade terms in respect of payment and units of purchase. The third fact is that the product must be in ample supply. The fourth fact is that the reason the complainant cannot obtain supplies is inadequate competition in the market.

It is our contention that these four facts to be found by the commission are not safeguards for industry, but rather thresholds which are very easy to get through. In other words, it will not be hard for the commission to make these findings, and hence obtain jurisdiction.

Let me show you why we reach this conclusion. As to the first fact which must be found, we think that if a complainant can show he would make a profit if he could obtain and sell supplies of the product, then he would have shown he was adversely affected by his inability to obtain supplies. As to the second fact to be found, we think the complainant has only to show he has a good line of credit and would purchase in normal quantities. This would not be difficult in most cases. The third point we think is axiomatic. In any event, except for occasional periods of scarcity, products are usually in reasonably ample supply.

The fourth point is often put forward as the most significant. We disagree. It requires proof that the reason for the refusal to supply is an inadequate degree of competition. Professor Donald Thompson, of York University in Toronto, has said that in his opinion the commission will simply establish concentration ratios for each section of Canadian industry. If these ratios are exceeded, then the commission will find inadequate competition. Because of the nature of Canada's market, most industries in Canada are fairly highly concentrated. In fact, the Department of Consumer and Corporate Affairs issued a report in 1971 giving the statistical analysis of concentration in Canada's manufacturing industries. We think the result will be that most industries in Canada will be deemed to be industries in which there is an inadequate degree of competition.

In other words, gentlemen, we believe that these four facts will be very easily found by the commission. This means, of course, that the commission will have jurisdiction.

Let me now deal with the thresholds for exclusive dealing outlined in section 31.4. The commission has only to find that exclusive dealing has been engaged in by a major supplier or is widespread in the market.

Let me say here that one of our main objections to this bill is that a "product" or a "market" is not defined. Although this is the case under the present law, the need for definition becomes critical when this bill proposes to make so many more trade practices subject to adjudication. In other words, it was bad enough before not to have definitions, but now, if the commission is to deal with all these matters, definitions of "product" and "market" are, we submit, essential.

Referring back to exclusive dealing, what we are saying is this. The definition of a major supplier will depend on the definition of the product. Let me give you an example. If the product is branded, for example, Chanel No. 5 perfume, then quite clearly the distributor of Chanel No. 5 is the major supplier, because he will be the only supplier. I should say in passing that there are two interesting sidelights to this example. If Chanel No. 5 is imported directly from France, then an order from the commission cannot touch it; international competitors in the Canadian market cannot be reached by the commission. On the other hand, if Chanel No. 5 is manufactured under licence, then the terms of the licence may be breached by an order if the commission orders the manufacturer to deal with types of distributors not sanctioned by the licence agreement.

When you look at the definition of "market" it is quite clear that a market could be defined as a shopping centre, a city block, a township, a province or the whole of Canada. It is left entirely to the discretion of the commission, so it is not hard for the commission to find either of the first two factors.

In addition, the commission must find one of three other factors. It must find either that the exclusive dealing is likely to impede a firm's entry or expansion in a market; or it must find that the exclusive dealing is likely to impede introduction of a product or the expansion of a product's sale in a market; or it must simply find that the dealing is likely to substantially lessen competition.

Bearing in mind what we have said about the lack of definition of a product and a market, we suggest to you that any one of those

three additional factors could also be fairly easily found by the commission.

In the provisions on tied selling and market restriction, you can see a familiar pattern. For both of them the commission must find that the practice has either been engaged in by a major supplier or that it is widespread in a market. I think we have already indicated why this should not be hard to find. As far as tied selling is concerned, the commission must find at least one other additional factor which is exactly the same as those for exclusive dealing. As far as market restriction is concerned, the additional factor which the commission must find is only that the market restriction is likely to substantially lessen competition.

Honourable senators, the gist of all of this is that all these thresholds are in fact very easy to go through, and once through them the commission has a virtually unfettered discretion.

It is true, of course, that for exclusive dealing, tied selling and market restriction there is an exemption for affiliated companies; it is true that for exclusive dealing and market restriction an exemption is provided if it is only used as a temporary measure; and it is true that for tied selling an exemption is provided if there is a technological relationship between the products. But in practice these exemptions will not have a wide application, and that is why we say the commission will have an unfettered jurisdiction. By this we mean, of course, that the commission can decide whether or not the business marketing practice is legitimate or illegitimate without reference to any criteria, defences or guidelines in the act.

In a nutshell, we are saying that this bill may require a supplier to sell his product to customers he does not want, who are able to obtain supplies of his product elsewhere, and hence destroy the supplier's distribution system.

The bill is based on a philosophy of maximizing price competition to the exclusion of all other sorts of competition. It does not recognize the special needs of franchise systems, for example, which rely for their very success on the right to limit the number of franchises granted. Because franchise systems can introduce technical innovations to a number of industries, because they are a means to overcome barriers to industry entry for relatively unskilled persons and because they substantially increase inter-brand competition, it is surely desirable to exempt franchise systems.

The bill does not recognize the desirability of permitting private brands to be exclusive. It does not recognize that it is in the public interest to encourage private branding as an alternative to national brands and to encourage the price reductions and inter-brand competition which accompany private branding.

The bill does not recognize that for many industries suppliers seek in their dealers not only minimum levels of financial responsibility but also high levels of technical competence for presale and postsale customer consultation. This is not just for consumer goods but also for commodities like stainless steel which is sold to industrial buyers. If technical advice is deficient, then the dealer may cause the stainless steel to be used incorrectly and the manufacturer is the one who suffers from the dealer's incompetence.

There are many other factors which we think the Bill does not, but should recognize. Our submission, on pages 25 to 28, gives three

examples of how we think the Restrictive Trade Practices Commission could exercise its discretion.

Let me now give you one of them. Suppose the complainant is not now carrying on business but wishes to do so. He has ample financial resources, adequate knowledge of the trade, premises in which to carry on business and is prepared to order in the quantities usual in the trade. If unable to obtain domestic supplies, he could purchase on the international market. If unable to purchase from the manufacturers, he could obtain supplies at higher prices from wholesalers.

The commission, in our view, could make the following findings:

- (a) the relevant market is the domestic and not the international market;
- (b) the relevant market is that supplied by the manufacturers and not the wholesalers of the product;
- (c) the article is the one in question and not any substitute;
- (d) the complainant is precluded from carrying on business even though he is not now in the business and even though he can obtain substitute articles because he has been prevented from entering the business of distributing the particular article in question;
- (e) the complainant can meet usual trade terms since his credit is good and he is willing to order in usual quantities even though there is no evidence as to his ability to market or service the article to the satisfaction of the suppliers;
- (f) the fact that the industry is highly concentrated is sufficient evidence of an inadequate degree of competition in the market.

Gentlemen, what we are trying to show you is that there are a host of legitimate business factors which enter into a supplier's selection of his customers. We think that the commission should be required, by legislation, by this bill, to consider these matters. This means that sections 31.2 and 31.4 should be modified and we have several suggestions to make in this regard.

The original concept underlying anti-combines legislation was that only conduct which constituted an undue restraint on competition should be prohibited. The minister appears to continue to recognize the validity of this concept because he has continued the concept in the bill in connection with combinations in restraint of trade. We believe the same approach should be built into Sections 31.2 and 31.4 dealing with trade practices. This can be done in any one or more of the following ways:

- (a) Only trade practices which *unduly affect competition* should be prohibitable. This is the concept underlying the existing act.
- (b) Only trade practices resulting from an otherwise unlawful activity (such as combinations in restraint of trade) should be prohibitable. This is the approach adopted in the United States.
- (c) Specific exemptions should be provided.

e.g. No order against refusal to deal or exclusive dealing should be possible if:

- (i) A supplier has adequate distribution in the market and an order would only increase distribution costs or reduce distribution efficiency;
- (ii) The complainant is not willing and able to meet all reasonable commercial and statutory standards;
- (iii) The complainant uses the supplier as a supplier of last resort;
- (iv) The supplier deals only with full line customers and the complainant will not handle a full line;
- (v) The complainant can obtain functionally competitive products.

If any of these approaches were adopted, we believe that the issues would be very much narrower than is now contemplated by the Bill and that it would therefore be appropriate for the courts to hear appeals from decisions of the Commission on fact as well as on law.

Mr. Chairman, before I conclude, can I touch on one other matter dealt with in some detail in our submission? On pages 9, 10 and 11, we suggest some amendments to the bill's misleading advertising provisions. Perhaps the most important suggested amendment is that a defence of honest mistake should be available to a charge of misleading advertising. In saying this, we recognize that industry should be very careful and should not be able to hide behind gross negligence of its employees. We believe however, that a fair position has been taken in the United Kingdom Fair Trading Act of 1973. Section 25 of that act provides a defence if the person charged can prove that the offence was due to a mistake or accident or some cause beyond his control and that he took all reasonable precautions to avoid the commission of the offence. We believe this defence should be available in Canada where the mistake was made by a servant, employee or agent of the person charged.

Mr. Chairman, that concludes our presentation. There are many other matters dealt with in our submission and we will be happy to make a serious effort to answer questions from the committee.

The Chairman: Now, Mr. Hemens, in connection with the presentation of your brief, who is going to open the discussion? There is a lot of meat in your brief and the subject is not an easy one to follow. Even the minister has conceded, many times, that there is confusion and complexity. We will appreciate any help that you can provide at this time for the proper understanding of the bill. How are you going to proceed? We have the opening statement.

Mr. Hemens: Mr. Chairman, we had rather thought that you might prefer, after the opening statement, to operate on a question-and-answer basis. As you can see, the brief is fairly complex. Fortunately, a great part of it is contained in the appendix and deals with what, to an extent, is dealt with in the opening statement. As to the other aspects, we will be glad to try to answer questions—unless you would prefer some other method of approaching it.

The Chairman: What is the wish of the committee? Would you care to have the brief read by members of the delegation, with

questions being interjected during the course of their presentation of the brief, or would you prefer just to start asking questions?

Senator Molson: Mr. Chairman, would it be feasible to go through the brief dealing with each heading as we come to it, discuss the general thought in that heading and then move on to the next section? I certainly do not think we should have the brief read, Mr. Chairman.

Hon. Senators: Agreed.

The Chairman: I think that is an excellent idea.

Mr. Hemens, your position, as we go over these headings, will be that either you will have some comment to make yourself or you will call on one of the members of the delegation to amplify the headings. Is that right?

Mr. Hemens: Yes. Thank you, Mr. Chairman.

The Chairman: All right.

The first heading in your brief is "Refusal to Deal—Exclusive Dealing—Market Restriction—Tied Selling". I would like to fire a question, to get things going. As a general question, with respect to these headings which give the authority to the commission to bring a person really to a hearing for the purpose of investigating a complaint in connection with refusal to deal, et cetera, how do you suggest that the provisions in the bill might be retained but the necessary amplification might be made to meet the points you raise in your opening statement?

Mr. Hemens: Mr. Chairman, in our conclusion, starting on page 28 of the brief, we have suggested several possibilities. First of all, one of the proposals is that we retain the basic concept of competition legislation, that only conduct constituting an undue restraint on competition should be prohibited. We suggest to you that would be one way of restricting the unfettered jurisdiction of the commission.

A second proposal is made in the same series of conclusions, that a restrictive trade practice, so-called, should be prohibited, or prohibitable, only if it were attached to an otherwise unlawful activity. That follows the system adopted under the Robinson-Patman Act in the United States. We also suggest the possibility of certain specific defences.

Senator Connolly: Before you continue, you are talking really to item (ii) on page 29 of your brief, that the commission "should be empowered to prohibit any trade practice only if it was the result of an otherwise unlawful activity . . ."

Mr. Hemens: That is right, senator.

Senator Connolly: Would you care to give an example of that?

Mr. Hemens: Well, let us consider refusal to deal. If the refusal to deal were part of a conspiracy among, let us say, the sole manufacturers intended to keep someone out of the market or to force them out of the market, you would have a conspiracy in

restraint of trade, and we think the refusal to supply under that circumstance is reasonably prohibitable.

Senator Connolly: For the sake of argument, let us use the example of the manufacturer under licence of Chanel No. 5 perfume, and let us say that that manufacturer under the licence has an arrangement with a certain selective group of outlets to be the exclusive outlets for that product. Let us assume that not only the owners of the outlets but the manufacturing organization agree as among themselves that no other outlets will be available. Is that the type of "otherwise unlawful activity" you are talking about?

Mr. Hemens: No, sir, we do not suggest that.

Senator Connolly: Do you, for example, consider exclusive dealing or exclusive arrangement to market to be an unlawful combination as between the manufacturer and the retailer?

Mr. Hemens: No, sir. There, I think, we get into the problem of the definition of "product". I know little about perfumes, except as they are worn by others, but I suggest to you that there is not only Chanel No. 5 perfume but, for all I know, there may be Chanel No. 1 to Chanel No. 10, plus a whole series of other perfumes. Consequently, we suggest that the manufacturer of Chanel No. 5 should be entitled to set up his normal distribution system. He should not be compelled by the act to take on as distributors or marketers people whom he does not want to take on. Those people can obtain any variety of perfumes they want.

The Chairman: Mr. Hemens, I suppose it is also a fair conclusion that the manufacturer of Chanel No. 5 would not want everybody smelling of Chanel No. 5; it would soon cease to be popular. So you can recognize the need for some control and some restriction. Certainly, the manufacturer should have the right to improve the marketability of his product.

But did I interrupt you, Senator Connolly? What you said brought to mind the fact that we have these matters which are reviewable by the commission, starting with section 31.2, and these are not offences. We have otherwise in the bill what are called "trade practice offences". Now, in the trade practices those are made absolute offences. In other words, that *per se*, if you have done this and it is established that you have done it, you are guilty. But what Mr. Hemens has been talking about is the function of the commission with respect to the trade practices which are not made offences.

As I understood him, it would appear that if some additions are made to these provisions that the commission deals with, they may deal with the list of trade practices that are set out in the bill in the manner provided in the bill, only if what is being done is otherwise unlawful.

Mr. Hemens: That is one of our proposals, yes, sir.

Senator Connolly: Plus this fact, that Mr. Hemens' first point is that if there is this exclusive dealing it does not unduly restrain competition. That is your first point. Your second point is that it should be associated with an otherwise unlawful activity. You have a third point, and you may have others too.

Mr. Hemens: Well, the third one suggests, senator, certain specific defences as being a proper answer to any such complaint.

Senator Connolly: That is right, yes; I am sorry.

The Chairman: Yes. If you look at that one for the moment, Senator Connolly, this part of the bill does provide for a hearing in which the person who is being inquired into may appear and may give evidence; but in order to give relevant evidence I would think that there would have to be some amplification of the provisions of the bill. It would appear that way to me, and I think that is the sum and substance of your point.

Mr. Hemens: That is our proposition, sir.

Senator Connolly: Could I ask just one simple question here, Mr. Chairman, in connection with section 31.2? For example, when the commission embarks upon a hearing, is it Mr. Hemens' submission that the commission should find that a person not only is adversely affected in his business, but that he is unduly adversely affected in his business? Is that the point where the undue restriction or restraint is to be injected by way of amendment? Or do you propose that that should be done in the sections referred to by Senator Hayden dealing with trade practices? At the moment I do not know what that section is; I cannot put my finger on it.

The Chairman: The trade practices which are reviewable by the commission start on page 16, and they start with section 31.2. Now, these are not offences.

Senator Connolly: I see.

Mr. Hemens: Your question, senator, really asks for a drafting answer, I think; and I think we have tried, in general, not to enter into competition with the Department of Justice. I think the answer could well be the addition of a subparagraph which would state that the commission "shall not make an order unless the trade practice complained of constitutes an undue restraint on competition," or, "unless the trade practice complained of is the result of an otherwise unlawful activity," et cetera.

Senator Connolly: I think that is helpful. That helps me a good deal.

The Chairman: Would you carry on to your third point, which may very well not be open to a person who is charged with a matter on which he can adduce evidence at the hearing?

Senator Connolly: Say that again, Mr. Chairman, would you? I am sorry, I did not get the beginning.

The Chairman: What I said was that the third point which is developed by the Association is the suggestion, as they develop it on page 29 in their brief, that they should be able to establish that there is adequate distribution as a matter of evidence, that the form which the distribution takes is a proper and justifiable form, having regard to the nature of the product and the market they are serving, and that those things should be elements which could be raised.

Senator Connolly: As a defence?

The Chairman: By way of defence, yes; by way of answers. This is a hearing, I suppose, and not a trial, to establish that there is adequate distribution, in the circumstances as they relate to the carrying on of this particular business.

Senator Connolly: Well, to summarize what Mr. Hemens' point seems to be, would it be appropriate to say this, Mr. Chairman, that what Mr. Hemens is suggesting is that section 32 should have a further clause in it in which the substance of the points made on page 29 of his brief should be reflected?

The Chairman: I gather that that was his point. Is that right?

Mr. Hemens: Yes.

Mr. R. Snelgrove, Member, Legislation Committee, Canadian Manufacturers' Association: Mr. Chairman, may I add some comments to expand on what Mr. Hemens said about the philosophy that is apparently behind the refusal to deal, in Part IV.1 of Bill C-7, which describes the matters which are reviewable by the Commission?

As Mr. Hemens indicated, the philosophy behind the drafting of these sections is one relating to, affecting price competition, to the exclusion of non-price competition factors.

Senator Connolly: Not supply; it is price?

Mr. Snelgrove: Price competition. The CMA, of course, recognizes that price competition is important, but it is not important to the exclusion of non-price competition, like the service of the product, pre-delivery, and post-delivery service, and many of these items that are set out in paragraph (iii) on page 29 of the brief that the chairman has referred to are directed to trying to offset the thrust of the philosophy in the bill of sole reliance on price competition.

The philosophy of price competition, certainly in many industries, does not reflect the practices of the real world. For many manufacturers of vehicles, automobiles, trucks, farm machinery, industrial construction machinery and many other hard goods, although pricing is important—and it is important to the consumer—the manufacturer, the distributor and the dealer are concerned, as well as the consumer, with how well the product is serviced after sale—Does the manufacturer or retailer stand behind the warranty? What repair facilities are there? What is the dialogue between the retailer and the consumer? What is the effect upon a consumer as it relates to the reputation of the retailer or manufacturer? Things of this nature are important.

For my own industry, the farm machinery industry, we have since 1970 gone through five years of a royal commission on farm machinery, and the royal commissioner had a study on the subject of the farmers' attitude towards farm machinery purchases. I refer to this not because it relates to farm machinery only, but the application of the study relates to many other hard goods. This study, which is available, resulted from an independent survey made

by the royal commission in Western Canada among farmers, and it describes the statistical analysis, sampling, et cetera. In the result, the survey came up with these conclusions—and these are the preferences of farmers in the purchase of farm machinery:

1. "Dealer has a reputation for standing behind farm machinery he sells." Very important. 88 per cent.
2. "Dealer has a reputation for honesty." Very important. 88 per cent.
3. "Dealer has a good repair and service department." 87 per cent. Very important.
4. "Dealer gives me a good deal." 70 per cent.

Then there is a whole list of items but the last one I read, "Dealer gives me a good deal," is the only one relating to price, either the price of a given product or the trade allowance he gets on his trade-in; all the others are non-price items. So, you see, at least in this survey, that the consumer places greater importance on non-price items, and I think this is generally the thrust of the approach that we are taking, that the philosophy of these sections in Part IV.1. of orienting these reviewable offences on the basis of price competition only is unrealistic and does not bear any relationship to the real working out of distribution and, in fact, to consumer preferences.

The Chairman: Well, Mr. Snelgrove, when you look at page 16 of the bill, which is Part IV.1 where you find clause 31.2, you will notice the language:

Where, on application by the Director, the Commission finds that

(a) a person is adversely affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,

The significance in that, to me, at any event, is what is the meaning to be attached to the words "on usual trade terms".

Mr. Snelgrove: Our conclusion has been that if you read it in full you will see that the language is, "usual trade terms of the supplier or suppliers of such product in respect of payment, units of purchase and otherwise," and to us the emphasis appears to be on the usual trade terms for volume purchases, that is units of purchase. "And otherwise" might confuse the issue, but very probably *ejusdem generis* does enter the picture to confine it still within the area of payment and credit terms.

The Chairman: The language used, "usual trade terms", has its own definition in (b), isn't that right?

Mr. Snelgrove: Yes.

The Chairman: That language does not go far enough to cover the peculiar or particular method by which in certain industries and in relation to certain products business is carried on and products are sold, and what the customer expects. In your view, should there not be a broadening of the definition of "usual trade terms"?

Mr. Snelgrove: Yes, there should.

The Chairman: And if it is broadened along the lines you and Mr. Hemens have talked about, would that not meet the full thrust of your challenge?

Mr. Snelgrove: It could very well, and much of our recommendation along the line you are suggesting is in item (iii) on page 29 of the brief.

The Chairman: You have not any particular phrasing that you would suggest should be added to paragraph (b) of section 31.2?

Mr. Snelgrove: I think the person referred to in paragraph (b) of section 31.2, the wording about the middle of the paragraph on page 29 of the brief—or that the person comply with "other reasonable commercial and the statutory standards which are applicable to other customers of the supplier", or words along that line.

Senator Cook: In other words, the bill does not seem to put any onus on the complainant at all. The complainant could have been three or four times bankrupt. I do not see that the fences are wide enough to say, using your example of the perfume, that the complainant stinks.

The Chairman: What you mean is that the elements of proof required are not broad enough.

Senator Cook: Well, I do not know if the defence would entitle the supplier to say, "We don't want to deal with this person because he is not a reputable person and he is not going to carry out our standards of supply. He will set up for a short time and then, having made a killing, will move on somewhere else." I just wonder if the fences are wide enough to allow you to attack, if you like, the character of the complainant who may not be of particularly good character.

The Chairman: Your point is in addition to what we have been developing with Mr. Snelgrove. There should be some considerable amplification in paragraph (b) of section 31.2 in order to make available a much broader area of elements that must be met by the complainant, and the complainant should be required to meet all these elements. Now the point you made is one that the complainant, of course, would not raise, but there should be a right in the person defending himself to say, "I wouldn't sell to this man for all the tea in China. He has been bankrupt two or three times".

Senator Molson: Mr. Chairman, we have been talking about hard goods, but there is also the question of the display and protection of consumable goods which might provide a very good reason to a supplier not to deal with a particular individual or a particular retailer, for example. It could actually damage Chanel No. 5 if it was displayed in the sunlight or kept carelessly beside the boiler in the store.

Senator Cook: Or next to the salt codfish.

The Chairman: What you are saying, Senator Molson, is that the merchandiser, the manufacturer, the dealer or the distributor should have a right, without being subject to an attack of this kind, to insist

on terms and conditions under which the product may be sold, as to display, for instance, and the nature of the display.

Senator Molson: And the protection of the quality. I think it should be a form of defence if it could be shown that one retailer actually was affecting the reputation, for the sake of argument, by letting the quality go down, whereas another was not. To me, that would be a valid reason for not wishing to supply any particular retailer.

The Chairman: It is obvious from our discussions so far that the words "usual trade terms" and what they are said to mean do not go far enough.

Senator Connolly: Could I put one more question, Mr. Chairman? I apologize for taking so much time, but we are discussing generally the refusal to deal. Originally, when Mr. Snelgrove referred to pricing and other aspects, they really did not enter into the question of refusing to deal. As a result of his comments, however, I have changed my mind completely in that respect. It may be that the witnesses are saying generally that with regard to refusal to deal, the act seems to imply that almost anyone who wishes to enter the business of distributing a given product—whether Chanel No. 5, a motor car, or what-have-you—would be entitled to appear before the commission and advise them that he can obtain such products for resale, but not on the terms which the dealers extend to their chosen customers, and he wishes equal treatment. The submissions made by the witnesses today seem to indicate that that right should not be granted automatically simply on the basis of price, but other factors should be taken into consideration. For example, the refusal to supply does not unduly restrain the trade, and there is no unlawful combination to which complaint might be directed. And these other defences, plus the one to which Senator Molson and Senator Cook made reference, should be available to the person against whom the complaint is made.

The Chairman: Yes, but you see, senator, the bill in the form in which it appears in paragraph (b) does not go far enough in its definition really of "usual trade terms" to permit such instances as those raised by Mr. Snelgrove, Senator Cook and Senator Molson.

Senator Connolly: Am I wrong in my interpretation of the discussion so far?

The Chairman: I do not believe so.

Senator Buckwold: I am interested in the problem of the definition of the word "product", as was ably pointed out in the presentation. In my opinion, this is very important. Just what is meant by "product"? Does it mean a wide spectrum of such a product as a tractor, or is it a specific type of tractor? I only raise this because of our friends from Massey-Ferguson and Westinghouse. Is it a specific type of tractor or a specific name-brand product? This, in my opinion, is a very grey area, when it is said "the product is in ample supply". It is quite possible to buy all the tractors needed, but a specific type of tractor may only be manufactured by Massey-Ferguson, or a specific model of television by Westinghouse.

It seems to me, Mr. Chairman, that we have there a very difficult area with regard to refusing to sell. How can a distributor be

prevented from approaching a manufacturer and asking for a certain product? I do not know just how we could get around this, but it seems to me that we are leaving the way open for tremendous—

The Chairman: But, Senator Buckwold, according to the illustration you have given you are able to establish in evidence before a hearing that there is adequate distribution in relation to a certain type of product. Should a person not wish to buy any other type manufactured by any other concern, but that product manufactured by Massey-Ferguson and he is ready to meet the usual trading terms, why should the law not provide that he is entitled to buy it and sell it to the public?

Senator Buckwold: It does not work out quite that simply in the market-place. Customers will very often require just that particular specific product in spite of the fact that there may be adequate supplies through the distributor. I just go on to say that I feel that the definition of "product" should be specific as to the broad product, an automobile or a specific type of product or brand-name. For example, General Motors may have a Chevrolet distributor in a given area, and it could be said that there is adequate distribution, but eventually the time arrives when there should be a second distributor. In due course, General Motors make up their minds that there is room for a second distributor of their product, Chevrolet. Before that time, however, someone says it is true that there is adequate distribution and supply, but there should be another distributor in this particular area. How will the commission be able to determine that?

The point I raise, Mr. Chairman, is that a person may wish to buy a Chevrolet car, or whatever other article it may be, rather than just the "product".

The Chairman: Yes, but the wording of the clause is "a product". There could not be anything broader than that.

Senator Buckwold: Do you interpret that to mean that so long as there is a car available a specific product would not be provided for?

Mr. Hemens: Our contention is that "a product" can be very broadly or extremely narrowly interpreted, which is one of the major problems of the proposed legislation.

Allow me to cite an example with which I am familiar. We manufacture a product which is generally known as cellophane and because "Cellophane" is a trademark, we are the only manufacturers of it. It is essentially a packaging material, however, and competes with such products as kraft paper, various types of film, such as polyester and nylon film, corrugated boxes, et cetera. Should the commission—as, in our belief, this bill would permit them,—rule that cellophane is the product, we might be required to make it available to all who wish to distribute it. If, on the other hand, the product is not cellophane, but a packaging material, the problem would not arise.

The Restrictive Trade Practices Commission have a report, for example, in connection with lead pencils. Is a lead pencil a product or a writing instrument? If it is a writing instrument, it competes with pens, typewriters, chalk and various other products. However, if the definition were restricted to "lead pencils," there would be an entirely different problem.

The Chairman: How would you suggest the definition of "a product" should be worded?

Mr. Hemens: We believe it should be broad and include functional competitive products.

The Chairman: Would that provide for a situation in which, for instance, a complaint were made to the director by a person, not because he could not buy an engine, but because he could not buy a particular make of engine to distribute?

Mr. Hemens: Exactly.

The Chairman: Do you consider that the insertion of the word "functional" would provide for such a situation?

Mr. Hemens: It would help, senator, but to provide a definition of "product" we will have to spend some time endeavouring to develop it appropriately. We admit it is not an easy term to define.

Senator Flynn: Your last example, "writing instruments," would include lead pencils and typewriters.

Mr. Hemens: But more people today write with typewriters than with lead pencils, senator.

Senator Flynn: I agree with you, but if someone wished to have a typewriter you would say, "Here is a lead pencil," which I do not believe would be appreciated.

Senator Buckwold: In my opinion, if we took the original interpretation of "a product" as meaningful in this context, it would almost mean that the act is inoperative. Generally speaking, somewhere in "a product" a person may find a suitable article. It may be a product tremendously inferior to that which the public would be prepared to accept. This is true of many very good products which are in popular demand and of which there is an imitation which is low in popular appeal because of its performance. That is why I say that the definition of "a product," if it is in the broadest terms of a product, would make the act meaningless. There is no way, unless it is a complete monopoly, that we need the act in that case.

Mr. Snelgrove: Except if the commission, in its wisdom, makes an order against a particular supplier to supply a person.

Senator Buckwold: I agree, but I am trying to bring the product into a more meaningful definition.

Senator Molson: What would you do about explosives, Mr. Hemens? That is a fairly wide field of product range. It is also in your field.

Mr. Hemens: It is also a very difficult problem situation. Let me try to deal with it this way: In Canada, at the moment, there are essentially four manufacturers of explosives, two of which are not a particularly great force in the market.

One of the things which in our view is required in respect of a distributor of explosives is fairly high technological competence. If

someone comes into the field—let us say, someone entirely new—demands that we constitute him a distributor of our explosives, goes to the commission, and is able to satisfy these very simple thresholds, we could be faced with a very serious problem.

Firstly, there is the federal Explosives Act. There is no requirement in the bill that he bind himself to comply with it. It is required by other legislation.

We would require that he be technologically capable, and yet we cannot establish that here. He can put up his money, he is prepared to buy on unusual terms, the product is in ample supply, and clearly it can be argued that there is an inadequate degree of competition. There is no responsibility for technological ability.

The Chairman: At this point, it is perhaps a good time to refer to an article which appeared in the *Financial Times of Canada*, arising out of the minister's appearance before the Commons committee, the discussion that went on and the questions answered. The article says:

Observers learned these points from answers from Mr. Gray:

Brand names do not necessarily mean products. So a television manufacturer would not be prosecuted for refusing to supply a dealer who could buy TV sets of another make.

Where is that in the bill?

Mr. Hemens: It is not in the bill.

The Chairman: The article goes on to say:

Usual trade terms can include inventories and provision of skilled service. For example, a new entrant could not claim he had been denied supplies if he had not satisfied the supplier's standards for servicing.

Where is that in the bill?

Senator Flynn: I suggest, Mr. Chairman, that the minister may be thinking that he will establish a policy of enforcement of the bill.

The Chairman: But you know, senator, how much reliance we place on pious utterances of that kind. That is the way I look at it.

Senator Flynn: It would be very bad, in any event, because another government could . . .

The Chairman: They are going to make their own interpretation, and with the director of the Combines Investigation presenting the evidence, you can feel certain that it will be presented in the light of what the statute says and not the policy of the administration. The article continues:

Practices of real estate agents could be examined by the trade practices commission if they are not regulated by provincial legislation. In all cases, provincial legislation takes precedence over Bill C-7. This also applies to fee-setting by doctors or lawyers. Most provinces, under health schemes, have the final say over medical fees. Such control is not held over lawyers' fees.

That is not entirely correct, because judges set a scale of fees on a solicitor-client basis, and there is a taxing officer in Ontario—and I suspect in other provinces—to tax lawyers' bills according to certain standards of services rendered.

It is improper to say that a lawyer can charge a certain fee. If the client insists on having it taxed, the lawyer receives what the taxing officer says he is entitled to receive for the services rendered.

You have stockbrokers' commissions, for example, set by the Toronto Stock Exchange under the authority of the Ontario Securities Commission. They are exempt from the bill as they are regulated by existing provincial regulations under the Ontario Securities Act.

The area which we are discussing with Mr. Hemens is not a new one. Senator Buckwold, when speaking about a product hit the point right on the head with regard to the meaning of trade terms. Meanings that are now being suggested for purposes of administration do not appear in the bill, so it looks as though we have an area to which we have to give some attention.

I am not committing myself to any particular opinion. I am merely pointing out our course of action and the approach we shall have to take in order to deal seriously with this matter.

Mr. Hemens, I notice that you say there should be an appeal to the courts.

Senator Flynn: Mr. Chairman, before we leave that point, do we solve the problem of a diminishing product if we insert the principle that the trade practice must constitute an undue restraint on competition?

Mr. Hemens: In my view, we do it only in part. If you provided, for example, a specific defence which would permit you to establish that there were, in fact, competing products available, that would help the situation.

Senator Flynn: There are three suggestions that would avoid the necessity of defining a product.

Mr. Hemens: It would go a long way toward it.

Mr. D. I. W. Bruce, Q.C., Member, Legislation Committee, Canadian Manufacturers' Association: I do not want to suggest at this point that the suggestions are exhausted. It is either by an exemption or defence, as we see it, that you can narrow this product problem.

Mr. Hemens: There has been a suggestion that the only complainants in respect of this bill are those representing big business. We feel that these refusal-to-deal problems are going to affect more adversely relatively small businesses, and Mr. McPherson, of Gibbard Furniture, is prepared to elaborate a little on that.

Mr. B. R. McPherson, Member Executive Council, Canadian Manufacturers' Association: With reference to our particular industry, the furniture manufacturing industry, and in our distribution, the question of price is not nearly the factor it was years ago.

When you get into the production of furniture, where styling and design is very much a factor, a problem is again created with regard to the question of what is a product. A piece of furniture is an item, but it is also a design. In the merchandising and distributing of furniture, in particular furniture of a higher quality or better design, it is of the utmost importance that such designs are sold in certain stores. We create designs for certain markets. If the industry is restricted from selling to the dealers for whom a design is created, they are going to be in serious trouble. These are small companies. Our industry is a very large one: it employs somewhere in the neighbourhood of 50,000 people; it is a \$1 billion industry; it is made up of many, many hundreds of factories. So, it is a complex industry. I think our industry exemplifies just what small companies are in this country. We would very definitely be affected by this refusal-to-deal provision.

I might also mention, along the line of what Mr. Snelgrove has said, that any surveys taken recently of our industry indicate a consumer preference for quality, first of all, followed by design and then price. In these particular surveys, dealer dependability was not one of the questions asked. Had it been, I would certainly think it would have been up at the top. In other words, the customer today—and this is borne out by surveys—is more concerned with assurance of the product, either through dealer dependability or the product itself. Consumers take a long look at their buy today, and price is way down on the totem pole.

This refusal-to-deal provision, we think, would very definitely limit our ability to market new designs and innovations of any type in the industry, because they have to be marketed on an exclusive or semi-exclusive basis. In other words, the manufacturer has to enter into a partnership with a dealer or a group of dealers in order to market a new design; otherwise, there is no way to get a new design off the ground. A dealer will certainly not enter into some kind of partnership if he does not know whether or not he is going to be forced to share that design with someone else whose store image is not in line with his. So, this would affect the sale of any such products. Under this proposed legislation, design would come down to the lowest common denominator. In other words, quality and design would be very much disturbed under this proposed legislation.

Senator Buckwold: This goes back to the definition of the product. I do not think the minister feels that any such case would be subject to an adverse ruling by the commission.

Mr. Hemens: With the greatest respect, senator, once you get before the commission, what the minister feels is completely irrelevant and immaterial.

Senator Buckwold: That is why I say the product definition becomes important. Again, that goes back to the other point.

There are two other matters I wanted to raise and on which I invite your comments. First of all, what about those instances where the manufacturer insists on price maintenance? If a dealer is habitually undercutting the market as against an established price, it is not unheard of for the manufacturer to refuse to deal with that dealer. That is the first point on which I should like to have your comments.

The second point is with respect to package buying. In other words, if a dealer wants to carry an exclusive item that is in real demand, he must also buy other lines that are manufactured by that manufacturer which may not be that much in demand. I know of many cases of this kind where, in fact, the dealer is not allowed just to buy the exclusive line, but rather he must buy a range. Could you comment on that insofar as this proposed legislation is concerned?

Mr. Hemens: Perhaps I could comment first, senator, followed by Mr. McPherson. On your first question, retail price maintenance is illegal. Refusal to deal, tied in with that illegality, in our opinion, might be prohibitable.

As to the second point you raised, I think you chose a very difficult concept, with respect. There are many other aspects of that concept. For example, in an industry which I know reasonably well, that being textile fibres, we, as a major manufacturer, are forced to manufacture, in order to supply our customers properly, a full line, including short runs of special materials. Those short runs of special materials are costly, and we can supply them effectively only to someone who will buy our ordinary material. What you are suggesting, senator, has already happened in our industry. For example, a distributor will purchase the long-run material on an import basis and come to us for the short-run materials, which, as I say, are much more costly. Under those circumstances, why should we be forced to supply that distributor when he is not supporting the major part of our industry? I can assure you that, that has happened in our industry.

Mr. McPherson: We are not confronted with the same problem in our particular industry, either at the dealer level or the retail level. Generally, we sell products in a given price range. The manufacturer, depending on the equipment he has in his factory, manufactures low end furniture, high quality furniture or medium quality furniture. I do not think we really get into what you are referring to, senator.

Just before I go on, Mr. Hemens referred to small companies and the fact that the minister has said that this legislation is in favour of small companies and the consumer, and that most of the criticism to date has been from large companies. I think he said that the source of the criticism should be looked at with a degree of skepticism. In my view, the reason that small companies have not come here to complain, strange as it may seem, is because they are just not aware of this legislation. I say that most forcefully, because in the last three weeks I have spoken to a number of companies, both dealers and manufacturers, in our trade, and I would not say that there is one per cent that are aware of this legislation. When a dealer asks me what this legislation is all about and I tell him that the design or designs that he carries exclusively on his street may be available to so-and-so down the street, he just about has a conniption.

Senator Macnaughton: Mr. Chairman, could I interject a question at this point?

The Chairman: Yes.

Senator Macnaughton: How many years has your particular firm been in business?

Mr. McPherson: It was established in 1835, but there was a period in the late 1930s when the firm changed hands.

Senator Macnaughton: How many employees have you?

Mr. McPherson: We have 107. If you are asking questions about our particular firm, we could be typical of others, not only in our own industry but in other industries. We happen to be in the situation where we are a limited supplier; we cannot produce enough at this time. I think there is good reason to believe that we may be in that position for some time. It is also possibly interesting to note why. We are known as a high quality firm; our designs seem to be attractive to today's clientele. I think this again is an indication that people do want something better, an upgrading. However, we feel we are the type of company that should be encouraged to expand and export. Under this legislation, if we had to sell other than to dealers that we feel can sell our product—and we do not pick them but it is the dealers that come around, they can choose to turn us down—I think our future would be very, very questionable.

Senator Macnaughton: Are you one of the chief employers of labour in your area?

Mr. McPherson: Yes. That is pretty well the situation in the furniture industry; it is mostly in small towns throughout the country.

Mr. Bruce: I was going to try to respond to Senator Buckwold's second question. I think this question of tied sales is important. At one end of the spectrum, I do not think I would disagree that if you want bananas you ought not to have to buy peanuts too. The question is, if you want one grade of bananas, perhaps you ought to be prepared to buy both grades. In our industry this would show up in the white goods business. While the act provides for a technological link, you cannot really argue that a refrigerator and a range are technologically the same, yet these products have been traditionally sold together; they are made in the same factory, using the same people, skills and so on. We think that in the long run it would be more costly and not as satisfactory if a purchaser could come in and say, "I am just going to take your range, but I am going somewhere else for my refrigerator, and somewhere else for my dishwasher." It would create turmoil. Of course, the minister advocates turmoil in the markets. The theory is that this is a good thing, because it goes back to this price competition. That is why I think on the question of tied sales some kind of defence or exemption is the answer. Obviously, one should not be able to fob off shoddy goods, because you happen to have one desirable line. I think that is wrong.

Mr. Snelgrove: I would like to expand on one remark concerning the effect on the smaller businessmen, particularly at the retail level, as it relates to the refusal-to-deal section. If our interpretations are right—and we think they are—as to the impact of the refusal-to-deal section, the adverse impact on the retailer who is an established franchisee, who has made a substantial investment in his premises, his service shop, employees, inventory and so on, if he has to compete with anyone who merely has a price to pay to the supplier

for the same goods, without performing any other commercial requirements of a supplier, such as the after-sales service function to satisfy the consumer, then it would be chaotic for the existing local retail entrepreneur, because he would be forced to compete with somebody who did not have to adhere to the same reasonable standards of retailing a product. The small retailer would suffer, and suffer immeasurably. As Mr. Bruce indicated, this apparently is the situation that is designed by the concentration of price competition.

Senator Cook: I do not quite understand why you say no order should be possible against only one company. If I complain that I cannot get goods from a company, what is the implication of that statement that no order should be possible against only one company?

Mr. Hemens: Let us take Mr. Bruce's industry as an example. There are a number of suppliers in that industry. Let us assume this particular situation. Should the commission be permitted to order Westinghouse, as distinct from C.G.E. or the various other producers of television sets, to supply this particular complainant, or should not the order, if it is to be made at all, be made to the totality of suppliers, and let them come to some arrangement as to who should be the supplier or how this distributor is going to be dealt with?

Senator Cook: Take a practical case. I complain that I cannot buy Mr. Bruce's refrigerators. Say the commission agrees that there is merit to my case and an order is going to be made. What is the form of the order?

Mr. Hemens: Let me take that in two parts. First of all, we suggest to you that the commission should not be able to say that you can get Westinghouse refrigerators, but simply that you can get refrigerators. You see, you are defining a product very narrowly as a Westinghouse refrigerator. That is too narrow.

Mr. Bruce: I think the premise of the senator's question is really this. I do not think that particular problem would arise except in the case of an individual who, say, wanted to be a refrigerator dealer; he did not have any particular thrust towards one brand or another; he scouted the market and found that for various reasons he could not get refrigerators from any of them. Let us assume this is not the result of a conspiracy, but it is just that each individual had some reason for not wanting to supply. At that point the unfairness is that the commission becomes the agent that makes the business decision as to who out of all this industry is going to supply this character, whom none of them wants to supply.

The Chairman: Mr. Bruce, have you thought of the effects of the language in section 31.2 following paragraph (d), saying what the commission may do when the director makes a complaint? It says:

the Commission may, after affording to the supplier or suppliers of such product in the market a reasonable opportunity to be heard,

do certain things. Does that not seem to suggest that even though the director files a complaint in respect of a product, which may be a refrigerator, and perhaps a Westinghouse, when it comes to the stage of the commission dealing with it the commission has to look at the whole range of suppliers?

Mr. Hemens: Paragraph (f) says the commission may:

order that one or more suppliers of the product accept the person as a customer.

We complain that in that case it can be directed to one.

The Chairman: Yes, the order can be directed to one, and this is the fault you find, the possibility that the commission can make the order in respect of one supplier only.

Mr. Bruce: Yes. Suppose you happen to be the one who gets "caught." Let us say this is in the metropolitan Toronto area. Suppose there are now 20 dealers whom you had considered adequate; you are sure that they can make a good living and therefore would be good dealers. To have this twenty-first one thrust at you is the unfairness.

Senator Cook: And yet the complainant may be only interested in that particular refrigerator.

The Chairman: Senator Cook, in looking at this clause, all you would have to do is strike out the words "one or more" so that the authority of the commission would be to order the suppliers of the product. That would meet your objection, Mr. Bruce?

Mr. Bruce: Well, it might. I would not be sure.

The Chairman: I can only look at your objection as it is in your brief.

Senator Connolly: Should we not ask ourselves, on that specific point, if an order were made that suppliers of the product provide the article in question; and then is that an order that can be carried out?

Surely, something else has to be done somewhere along the line? If you are going to make an order, for example, that is going to cover Westinghouse, General Electric, and all the other manufacturers of television sets, and if it affects them all but does not affect any specifically, then I think you take the teeth out of the thing and make it impossible for the order to be carried out.

The Chairman: Senator Connolly, one thought that occurs to me is, if you had such an order by the commission, addressed to all the suppliers of that product, they would have to get together, as you are indicating, in order to agree on how they were going to ration the supply. Would the director then decide that that was a conspiracy?

Mr. Bruce: It seems to me that this points up the dilemma you are in when you try to transfer a business decision to a government agency.

Senator Cook: Also, is there not the dilemma that the commission makes an order against people who do not appear, say, Westinghouse, and argue the case, and the commission do not agree with them. Now General Electric and everybody else has to suffer.

Mr. Bruce: That is right. I would like to point out something, if I may, but I do not know how reluctant you are to learn lessons from the United States.

Senator Cook: I think we are prepared to learn from anybody.

Mr. Bruce: I think it is generally recognized that in the anti-trust field the United States is as tough as you will find anywhere, but the one area that Robinson, Patman and everyone else has left alone is the right of the individual trader to choose his customers. Whether that is by good management or good luck I do not know, but it obviously creates quite a problem for a government to make what is essentially a business decision.

Mr. Hemens: Let me add only this to it. We are talking about a television set situation. The order, however it is directed, can be directed only against Canadian manufacturers; it cannot be directed against the competitors of Canadian manufacturers—and somehow I think that has to be wrong.

Mr. McPherson: May I add that again, in our particular industry . . .

Senator Connolly: Your own industry, the furniture industry?

Mr. McPherson: . . . the furniture industry, there is an increasing trend, especially in stores. There are two areas which surveys look to for future expansion in sales in the industry: one is the warehouse type of operation, such as Leon's; and the other is the specialty store which is the direct opposite, the store which is trading on design and better service, better quality and so on. The specialty store requires exclusive merchandise or semi-exclusive merchandise, as opposed to the department store. It is a dealer who shops for it; it is not the manufacturer who goes out and sells; it is the dealer who shops the markets. If he cannot get this merchandise in Canada, say, because it would not be able to get in under the legislation, then he would go and get it from the United States; he would get it from outside our borders. So we would anticipate a really tremendous increase in imports in the type of furniture which is in increasing demand. I have just referred to a warehouse type of operation like Leon's. Last year they brought in 20 per cent of their furniture from the United States and at their annual meeting the other day they predicted that 40 per cent would be coming in in 1974. This would be merchandise that they would take full mark-up on, because it would be exclusive. That would be at the expense of the rest of the merchandise, which would be Canadian, and that is where they would drop the price.

Senator Laing: What is the tariff on furniture?

Mr. McPherson: 15 per cent.

Senator Heath: Mr. Chairman, I wonder if this is a disturbing illustration of part of the bill. I wonder also if this is an example—you can tell me if I am following you correctly—of where this may do absolutely the opposite to what the intention of the bill is, apparently. In the case of a small manufacturer who has a limited capacity to produce and has an excellent product, if he is forced to make his distribution through a large group which has a wide vertical organization, and if this particular organization wants to buy up the small manufacturer's organization, this could, I think, from what you are saying, mean that the large distributor would take over the small man's production, pack it away in a warehouse and subsequently really drive him off the market, because he would

not then be able to distribute his specialized, albeit expensive, rather haphazard but particularly in demand type of product where it is available.

This has happened already, and it seems to me that this bill we are dealing with now is going to make this even more difficult for a small manufacturer with an excellent product to market independently and improve and expand. Am I wrong in this?

Mr. Bruce: I think you have touched a very dramatic example and I would be cautious to say that things happen exactly like that. That is the kind of concern that we have, I think, that this emphasis on price competition encourages people who are only interested in making money, in putting bucks away and using their particular financial ability to do that.

Senator Heath: It is rather disturbing.

Mr. McPherson: A few years ago, price was the main area of competition. It was not unusual a few years ago for a dealer to think that if he sold a product it did not matter whether it was good or whether it was bad; the main idea was to make the sale. He was not thinking particularly of the customer and he might even put it over the customer. That was a few years ago, whereas today that type of dealer has no future. He is struggling today and any survey would show that the articles that are shown in the discount stores are fighting for survival. The people are going more towards places where they can get assurance and they are not price conscious. This is where we really question what is the greater percentage. Is the act going to favour the greater percentage of the consumer, or is it going to act in disfavour of the consumer? It certainly seems he is going to suffer.

Senator Laing: What percentage of the furniture sales are credit sales?

Mr. McPherson: I am afraid that is a question I could not answer.

Senator Laing: Would it be over 90 per cent?

Mr. McPherson: I would not think so. I would just be taking a guess, but I would not think it is that high.

Senator Macnaughton: Mr. Chairman, am I right in assuming that "a product" would cover such general commodities as copper, steel and aluminum, which could very easily be in short supply and with respect to which one company might be an integrated company involving the whole process, from the mineral right up? Is there not some idea behind this legislation that with respect to Canadian producers of commodities which are needed, the manufacturer should not be in a position to say, "We will favour this one as opposed to that one"?

Mr. Hemens: This applies, senator, only if the product is in ample supply under section 31.2(c).

The Chairman: That is one of the elements.

It seems to me that we have run over the items which you have raised in your brief in relation to Part IV.1 of this bill dealing with matters which are reviewable by the commission, except that you

do suggest that there should be a right of appeal from the decision of the commission.

I am wondering whether in that connection you have considered the fact that in the Federal Court Act, section 28, there is a provision for review of decisions of a federal board, commission or other tribunal. What have you to say as to the adequacy of that? The appeal is to the Federal Court of Appeal.

Mr. Hemens: Well, under section 28 of the Federal Court Act there are only three grounds for appeal. The first is under section 28(1)(a), which is failure to observe principles of natural justice, or action beyond jurisdiction, or failure to exercise jurisdiction. We submit, and we have pointed out, that we are not going to run into that situation very frequently, because of the wide discretion. Then there is paragraph (b).

The Chairman: Let us rush to paragraph (c).

Mr. Hemens: Section 28(1)(c) of the Federal Court Act states:

(c) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

With this very wide discretion I think we are going to have trouble in establishing any sort of caprice. I suggest that you are going to have great trouble in establishing perversity with, again, the wide discretion. And what is the material which is before them? Well, if you look at the act you find that there is no standard of proof required: "Where, on application by the Director, the Commission finds that . . ."

The Chairman: Now you are answering me on the basis of the bill, but you are not satisfied with the factors that the commission must find in order to have authority to make an order. So I am asking you about section 28, if the things which you have objected to are improved in the way you have suggested.

Mr. Hemens: Well, let me elaborate on that. If the things which we have suggested were to be included in the act, we wonder why there would be any objection to a normal appeal, because a court of appeal would be in a position to determine a finding as to product, if "product" were properly defined; a finding as to market, if "market" were defined; and not leave it to this sort of breadth—and it is not breadth, really, it is the opposite, narrowness—of this right of appeal.

The Chairman: So your position, shortly, is this: that a right of appeal appended to this bill without making the changes you have discussed would be a meaningless sort of thing, and a right of appeal, even with the changes that you have suggested, would not be as helpful as an appeal to the courts.

Mr. Hemens: Exactly, sir.

The Chairman: So you think there should be an appeal to the courts, in any event.

Mr. Hemens: Yes, sir.

The Chairman: Whether the bill stays the way it is or whether the changes you have recommended, or any of them, are made.

Mr. Hemens: Yes, sir, but less strongly if the bill stays the way it is, because in my personal view it would become rather difficult for an ordinary court of appeal to determine an appeal of a finding which is essentially a discretionary finding.

The Chairman: You mean you cannot apply a judgment to a discretionary order?

Mr. Hemens: It is difficult to appeal against a normal, reasonable use of discretion. If the discretion is broad, then it becomes very difficult.

Mr. Bruce: If it remains the way it is, then to be satisfactory it would probably have to be in the nature of a trial *de novo* so you could get to the merits.

The Chairman: I was just coming around to that, because in the Criminal Code we still have provisions for a trial *de novo* where a man has been summarily tried before a magistrate or provincial judge. The trial *de novo* means that the whole case is gone into again on the theory that there has not been a full or adequate disclosure or discovery at the trial. That has been justified all the time on the basis that speed seems to be such an essential element in the disposition of summary trials before magistrates. We went into all this when, of all things, this committee was the one which produced the new Criminal Code back in about 1954 or 1955. I still think we did a fair job, but there was an attack on the trial *de novo* method then. But I take it that what you think here is that there should be a trial *de novo*. In other words, there should be the opportunity to hear all the evidence again and any new evidence that might develop.

Mr. Bruce: Certainly, if it is going to remain as general as it is now. I think that was Mr. Hemens' point.

The Chairman: Well, if all of the evidence is not developed at the trial, then in a hearing there is no limitation on the hearing as long as you stay within the scope of the jurisdiction of the commission and the statutes. Why should they review all that evidence again? They will have to study it.

Mr. Bruce: Simply because section 28 of the Federal Court Act—the so-called appeal that is now provided for—would never get at the merits.

The Chairman: But Mr. Hemens and myself have gone further now. He had said that he wanted a right of appeal to the courts in any event, but not as strongly if all the suggested amendments are made; and what was bothering me was the use of the words "not as strongly".

Senator Flynn: Mr. Chairman, I understood Mr. Hemens to say quite the contrary. I understood him to say that in the event that the amendments were not made, then in his opinion the appeal would be practically useless because the discretion of the court would be pitted against the discretion of the commission.

The Chairman: The other part of his answer was that assuming that all the amendments they have suggested are made, then does he still want a right of appeal to the courts? And he said, "Yes, but not as strongly". The words "not as strongly" are what bothered me.

Mr. Hemens: I am sorry; I must have communicated poorly. I think an appeal to the courts is even more justified and even more practicable if we have the proposed amendments.

The Chairman: Very well.

Senator Connolly: Mr. Chairman, I notice that the witnesses have been speaking about an appeal going to the Federal Court, as provided in section 28. Do the witnesses have any views as to whether that is the appropriate court? In some of the other material and submissions before us it was suggested that such an appeal should go to the provincial courts.

Mr. Bruce: I believe we have so submitted, too, largely on the basis that the Federal Court judges have very little expertise or experience in criminal law.

Senator Connolly: Yes, that was the point made in the other submissions.

Mr. Snelgrove: Particularly as it relates to the prohibitive offences.

Mr. Bruce: I am told that it is not in the brief, but we certainly discussed it.

Senator Connolly: So the question of what court the appeal should be to has not been discussed in your brief.

The Chairman: That is a matter that we will have to come to if we get that far along the road.

At this stage, I think maybe we have shaken everything we can out of these particular elements of the act dealing with the jurisdiction of the commission to review matters.

Senator Connolly: Could I ask another question, Mr. Chairman? It seemed to me that the latter part of the discussion we had this morning ultimately came back to the problem of the definition of "product", as Senator Buckwold has raised it here, and what we have before us is the proposal to amend the Unfair Competition Act. I am not familiar enough with the mother act to know the answer to this question, but is there a possibility that some of the things that we have been considering as appropriate for change in this bill might be covered by a power to regulate that might be in the mother act? Can any of the staff tell us whether there is a power to make regulations? Usually there is.

Senator Cook: It is unique, if there is not.

Senator Connolly: I wonder, too, whether those regulations could cover some of the problems that we have discussed.

The Chairman: Well, Senator Connolly, you know the short answer, I think, of quite a number of the members of the committee—and I think I know their views—is that the committee as a whole is violently opposed to legislation by regulation.

Some Hon. Senators: Hear, hear.

Senator Flynn: That would be the case, indeed.

The Chairman: This would be substantial, if these amendments were made, and I do not know how you could amend provisions in this bill, legislatively, in their scope and effect, by passing some regulation.

Senator Connolly: I am not suggesting that you should. I just wonder whether the power to regulate is there, and whether it might be one device that might be proposed to deal with this; because if it is, we will have to handle it.

The Chairman: By the way, I might draw your attention to the fact that the right to make regulations in the bill is limited. That is section 48.

The Governor in Council may make such regulations, not inconsistent with this Act, as to him seem necessary for carrying out this Act and for the efficient administration thereof.

So that the regulation method would not appear to be a method that could be used to bring about the changes which this delegation has recommended.

Senator Beaubien: Mr. Chairman, if the regulations could amend, as it were, the act, they could be amended again.

The Chairman: Oh yes.

Senator Connolly: You are not quoting from the bill, Mr. Chairman; you are quoting from the mother act—is that right?

The Chairman: Yes.

Senator Connolly: And you were quoting section 48.

The Chairman: Yes. Now then, I would suggest that we might move on.

There is another matter that I would like to get Mr. Hemen's view on, and the view of his delegation. That is on what this bill does in the way of creating a civil right to sue for damages by any person who can claim that he has been hurt; and that what has been done by the person he is suing is contrary to the provisions of Part V. Those are the conspiracy sections of the act and the bill.

Establishing a civil right to sue, is something new, and it is interesting that there has been some case law as to what is the common law. I am just reading from one of these cases, and it is one decided in the Supreme Court of Canada in 1962, the *Direct Lumber Company Limited against Western Plywood Company*

Limited, and in his judgment, at page 649, Mr. Justice Judson says this:

I recognize that there may be a difference between a common law action for damages based on conspiracy and one based on price discrimination. The common law itself imposes liability for harm caused by combinations to injure by unlawful means but the common law never gave any cause of action for price discrimination unaccompanied by conspiracy.

Now then, if you go back and look at what this bill proposes in section 31.1, on page 14, what it says is:

“31.1 (1) Any person who has suffered loss or damage as a result of

(a) conduct that is contrary to any provision of Part V . . .

That is the section about conspiracy, restraint of trade, fixing prices and lessening competition, and so on.

. . . or

(b) the failure of any person to comply with an order of the Commission or a court under this Act, may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.

It is permitted that:

(2) In any action under subsection (1) against a person, the record of proceedings in any court in which that person was convicted of an offence under Part V or convicted of or punished for failure to comply with an order of the Commission or a court under this Act is, in the absence of any evidence to the contrary, proof that the person against whom the action is brought engaged in conduct that was contrary to a provision of Part V . . .

Now, this is a very substantial civil right that has been created, and in common law, where a person who has been harmed might have a cause of action, Mr. Justice Judson says that if there is an element of conspiracy in what was done—the unlawful act—that that would be an enforceable action at common law. It would appear that this particular section of it, so far as it relates to Part V, may legally comply with the requirements of the common law; but we have to look at all the elements. For instance, what a plaintiff in such a case has to establish is conduct contrary to Part V.

Now, it is not that there has been a conviction—the man may never have been tried, or the party who is being sued may have been tried and may have been acquitted; yet under this section, or is it would appear, a person who can prove that what this person did was contrary to Part V, or the conspiracy section, has a good ground for his action. Of course, he has to prove damages to him; not general damages, but damages, and the measure of those damages, that is, the extent to which he was hurt by this conduct.

Now, the question is: Is that too broad? Should a person who has not even been proven guilty of a criminal offence have the same section of the statute which creates that criminal law applied to him in order to give a right of action to a person who hopes to establish that he has been harmed by what was done? Or should the basis for this cause of action be the fact that there was a conviction?

This is a very important issue, the creation of this new right.

Senator Flynn: Surely, Mr. Chairman, the first question must be whether it is within the competence of the federal Parliament to do that. Is it necessary for the purposes of this act to create this civil right? I doubt it very much. It belongs, I think, to the provincial legislatures to establish that right if it is not already provided. I have an idea that under the civil code the facts would constitute a fault which would be the basis for an action in damages. It need not be so in common law, but it belongs to the provincial legislatures.

The Chairman: I have read the judgment of Mr. Justice Judson and I would be inclined to think the judgment on this point may be *obiter*, that is to say that it may not have been essential to the determination of the case, but it does indicate that at common law, and he has researched that, a person who has been injured by unlawful means would have a civil right of action, but it must be in relation to an offence that involves conspiracy.

Senator Flynn: May I point out, Mr. Chairman, that he said that discrimination in prices would not be the basis for an action in common law for damages? Is that it?

The Chairman: That is quite true, and the commission, in doing what it is doing—that is to, say making an order—is not making an order in relation to a criminal offence.

Senator Flynn: No, I agree with that. But the point is that if it is not in contravention of the act, then that would be impossible also under the civil code.

The Chairman: I do not expect that we are going to make a decision on this one way or the other today, but I wanted to get Mr. Hemens' view and the view of his group in relation to the creation of this civil right to sue for damages.

Mr. Hemens: There are two aspects of this, Mr. Chairman. Senator Flynn has just raised the question of constitutionality, and we have mentioned it because we think it is an important item. But we do not want to make a big thing of it. The second aspect to which you, I think, have adverted is that there is a provision for a civil action whether or not there has been a conviction on the criminal offence. The problem there lies partly in the fact that if you prosecute for a criminal offence, then you must prove it beyond reasonable doubt. If you take a civil action, there is the balance of probabilities, which means that there are two entirely distinct standards of proof. One wonders, if we are concerned with a criminal offence and the right, as the result of a criminal offence, to damages—and we don't contest that—if the standard of proof should be that for a criminal offence. Therefore, there should be a conviction before there is a civil suit.

Senator Flynn: A very logical conclusion, but it shows that we probably should not get mixed up in this field at all. If you require

for a civil action the standard of evidence required in a criminal action, then it is not fair.

Mr. Hemens: I do not think a court could operate on that basis, and that is why I say that I think you have to have a criminal conviction first.

Senator Buckwold: I think it is necessary to have some kind of right of claim for damages that may be caused as the result of restrictive practices carried on, and by which a man may be ruined. I would agree that you should have a decision somewhere along the line because a refusal to sell may break a man, and I think he should be entitled to compensation.

Mr. Hemens: I agree that if I injure you as a result of a crime that I have committed, you ought to be entitled to a remedy, but I think you have to convict me of that crime.

Senator Buckwold: I agree on that, but I was rather commenting on Senator Flynn's idea that we perhaps should not be involved in this whole matter. I think somewhere we have to be, and perhaps it should be in the area of the conviction on the criminal offence. But it could get down to the situation where refusing to sell to somebody and putting him out of business would be a criminal act.

The Chairman: Well, I can tell you now that under the bill it is not. Of course, if a group of people got together, then that might be something else.

Senator Buckwold: But if you refuse to sell to a man and he goes out of business—if you say to him, "I don't want you any more. Goodbye!" and he goes out of business and loses all his investment and later you are ordered to sell to him, and it is still not a criminal act as interpreted by our chairman, then I say that the man who suffers should have the right of action for damages.

Mr. Hemens: Well, failure to comply with an order of the commission, I suggest, could become a criminal offence.

Senator Buckwold: But we are not talking about the order here; we are talking about the refusal to sell to the man.

Senator Cook: There is no offence without a conviction.

Mr. Snelgrove: That is a reviewable offence.

The Chairman: The criminal offence is the failure to comply with the order. It is not what the commission dealt with that was criminal in its nature.

Senator Cook: It is the conviction that makes the criminal.

The Chairman: The failure to comply with the order.

Senator Flynn: The failure to comply with the order would probably be the basis for the civil action under common law if the damages are consequential upon the refusal to obey the order. It would be contrary to public order not to obey an order of the commission. I think there could be a civil action, anyway, but you

would have to go that far and you do not need a provision in this bill to say that you will have a civil remedy.

Senator Buckwold: Well, I am not a member of the legal fraternity, so, then, under this bill what right of damages—and perhaps the chairman would clarify this for us—has a claimant who has suffered from a restrictive trade decision? I will give you an instance: A man is a distributor for, say, Westinghouse and he makes his living out of this. Suddenly, Westinghouse decides that it does not want him and he is cut off. Later they are ordered to sell to him again, but for two years he is out of business. Is there any claim for the losses suffered by the plaintiff during that time?

The Chairman: Well, what I am telling you is that the bill provides that a person who has suffered damage as a result of any failure on the part of a person to comply with an order of the commission may sue, but he has to prove his damages.

Senator Buckwold: Then in that case, if they complied with the order, there would be no claim for damages, even if damages were suffered for a period of time.

Mr. Bruce: It depends on the reasons for the cutting off. In common law there might be an action for damages.

Senator Flynn: But we would be no better off if the action were taken and it was contested on the question of constitutionality. The court could find that it was beyond the competence of Parliament. You could drag it out for years and you would only find yourself involved in a lot of legal costs.

The Chairman: Well, we have had Mr. Hemens' viewpoint that if any person suffered damage by reason of a criminal act under Part V of this bill, he should be compensated or should have the right to seek compensation from the person who has caused that damage. Mind you, that is a particular right to a particular person. He has to prove the damages in relation to himself.

Senator Flynn: Returning for a moment, however, to the question of constitutionality, I believe legislation in some provinces for the protection of consumers provides such a remedy. It would certainly be within the competence of a provincial legislature to provide that in any case of intervention, even by the federal law, there would be a civil remedy.

The Chairman: Yes, and then you have this conflict. There may be a civil action in relation to the same subject matter in the province and also under this act.

Senator Cook: If a supplier were cut off because of an honest business judgment he would have no right of damages, even though it was later ordered that he be re-instated. If the order of the Commission were carried out, the supplier might sue. However, if he were cut off through malice he would not have any right, irrespective of that.

The Chairman: Except that in common law he would not have a civil right for damages caused by regional price maintenance.

Senator Cook: Oh, no.

The Chairman: It appears in the common law that the element of the unlawful act must include conspiracy.

Senator Cook: I am referring to breach of an implied contract.

Senator Flynn: Could we not ask counsel for advice, Mr. Chairman?

The Chairman: Yes, but, as you know, the manner in which we operate is to debate matters here, after which we may hold a conference. "After which" does not mean later today, but after we have heard all representations, and the minister, if he wishes to do so, has attended. Some departmental officers may wish to attend to consider the bill clause by clause. We are simply attempting to establish all the possibilities inherent in the granting of this civil right and the conditions attaching thereto. We know now the attitude of this delegation.

Are there any other particular points, Mr. Hemens, to which you would like to call our attention at this time—for instance, trade practices such as misleading advertising, which are made criminal offences?

Mr. Hemens: In respect of misleading advertising, we have made proposals commencing at page 9 of our brief. You may also recall that in respect of a proposed defence of honest mistake we made a statement in our opening remarks.

This may be a personal reaction, but on page 10 of the brief reference is made to the problem raised by the term "general impression", which is found in section 36(5). As it stands at the moment, I consider it to be ambiguous, reading as follows:

In any prosecution for a violation of this section, the general impression conveyed by a representation as well as the literal meaning thereof shall be taken into account . . .

What is meant by "the general impression"? Does it mean the impression of the general public, or is it the general impression of a complainant? We are not sure. For instance, if I happened to be the complainant and the literal meaning is quite clear but I have the general impression that there has been a misleading statement, is that evidence, or is the court required somehow or other to arrive, by way of a survey, at the impression of the general public?

Senator Cook: It would have to bring into play the concept of a reasonable man.

Mr. Hemens: In my opinion, it is closer to the concept of a credulous man. I have always been opposed to that concept, which I believe means an idiot.

Mr. Bruce: This is the answer of the present minister to Mr. Basford, "credulous man".

Mr. Hemens: It needs at least clarification and if it means the impression of the general public, we suggest that it should be clear

that customer surveys by professionals should be considered to be relevant evidence, in which case, of course, there should be a right of cross-examination.

Mr. Bruce: As a general statement, I think it should be clear to the committee that we do not condone failure to meet the highest standards of advertising. It is just that the bill perhaps does not give due recognition to the fact that the problems of control, particularly in larger organizations, sometimes are tenuous and that honest mistakes should not be dealt with severely as long as there is good faith and an attempt to rectify them.

Mr. Hemens: Together with reasonable precautions to avoid them.

Mr. Bruce: Yes, but it is very difficult to argue against the need for the clean-up of many advertising practices we see today.

The Chairman: Is there anything else, Mr. Hemens?

Mr. Hemens: I do not believe we have any other major issues, but we would be glad to answer any further questions.

Mr. Bruce: I would like to mention one legal point, which is mentioned in our brief. It is our concern about the introduction of an interim injunction into the criminal law. One can understand why a bureaucrat would like it, but introducing into the criminal law the principle that something can be enjoined because it is thought it may happen in the future is almost an instrument of a police state. That is perhaps dramatizing it too much, but it is somewhat akin to seeing a person walking on the street and deciding in advance that he may commit a crime, and saying therefore, that he should be taken into custody. The injunction, at least in the common law, of course, has always been an extraordinary remedy in an attempt to hold a situation. It has never, however, been a feature of criminal law and this attempt by bureaucrats to introduce such power is worrisome. In my opinion, the interim injunction is an example of that and ought to be carefully considered, although I am sure that Mr. Gray can argue very strongly for it.

The Chairman: May I revert to the section containing the phrase "general impression"? It is most unusual in its wording, which is as follows:

In any prosecution for a violation of this section—

That is advertising.

—the general impression conveyed by a representation as well as the literal meaning thereof shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

There are words in common use today which, when used, are not intended to convey the literal meaning. They have an acceptable meaning in conversation and reading but they would be 100 per cent removed from any literal interpretation of the words.

Why should it not be a case of, "Here is what was said"? Is there a representation of what was said, and what is that representation?

When we say "a general impression", a general impression by whom? How do you present evidence of that? Are you satisfied that the judge sitting on the bench is capable of determining what the general impression would be of those who read that?

It seems to me a fantastic way of doing it.

Senator Molson: Would this cover the kind of advertising that deals with "Whiter, lighter, stronger," and that kind of thing, where the general impression is not the same as the literal meaning?

The Chairman: It could, but you may consider both the general impression of the judge and the literal meaning.

Senator Molson: But the literal meaning in some of those ads is zero.

Mr. Hemens: Is it the general impression of one person or is it the impression of the general public?

The Chairman: Surely, it is not limited to the impression of one person?

Senator Cook: How do you test that?

The Chairman: They would not use the word "general."

Senator Cook: They could not test the general impression of one person.

The Chairman: If you paraded to the stand 20 people who said, "Our general impression of those words is such-and-such", the Crown would then call 30 people to say the opposite, and on the balance of numbers the general impression might be determined.

Senator Flynn: You would have to call a lot of witnesses who had read the advertising, and they would say, "This led me to buy the thing. I thought it would be like this or that." I know we would enter into a long debate.

Senator Molson: The survey method suggested by Mr. Bruce is generally accepted, if it is a properly planned survey.

Mr. Hemens: If you conclude, senator—and it might not be fair to conclude—that this is a replacement for a credulous man, you may come to the conclusion that it is my general impression.

Senator Desruijsseaux: I was thinking possibly beyond the scope of this, about what would be the repercussion if for instance, Westinghouse or CGE advertise in the U.S.A. and that advertising is called here misleading advertising - on your advertising in Canada, in the magazines, over radio and on television.

Mr. Bruce: In our particular case, I would not think very much. Certainly, we are not a big advertiser. I do not know of a case where such a conflict has arisen. We attempt to keep our advertising different from that in the United States. We do not see the thing in the same way as they do in the United States. Westinghouse

advertising tends to be institutional rather than related directly to the product.

Senator Desruijsseaux: That may be the case with some companies, but not with others.

Mr. Bruce: If we found that happening, certainly we would hold consultations. It would be important that we did not get into any trouble in Canada because of what they were saying in the United States.

The Chairman: I am looking at the headings which appear in your table of contents. They appear to be clear in connection with the point that you are attempting to make. Would you like to add anything more to those headings, other than those with which we have dealt so far?

Mr. Bruce: I feel that we have covered the important matters.

Mr. Hemens: In all fairness, we should add one thing which came to our attention latterly. It is on page 11 of the brief, under the heading "Solicitor-Client Privilege."

We have talked with the Department of Justice. The statement is made here:

... the Department of Justice has recently taken the position that the defence of privilege attaching to communications between solicitor and client is not available under this section.

We now believe that impression to be incorrect. However, our view remains that solicitor-client privilege exists.

The Chairman: It is your view that the statement to the effect that the Department of Justice has taken a position is not correct?

Mr. Hemens: We think it is not correct.

Senator Cook: It is only fair to say that whatever position they take, it is for the courts to decide.

Senator Connolly: Are you telling us that you thought originally that the Department of Justice would not recognize the solicitor-client privilege, and you now think you are wrong in that?

Mr. Hemens: We received information which we think was incorrect.

Senator Macnaughton: But you are not sure.

Mr. Hemens: We spoke to the deputy minister, who stated that they do and will recognize the solicitor-client privilege.

The Chairman: Where I have found they do is where the statute says they must.

We shall meet at 3.30 this afternoon. The minister will appear to deal with the point raised in our discussion of the National Parks Bill.

Mr. Hemens: Mr. Chairman, may I thank the committee very much.

The Chairman: Thank you for attending the committee meeting.

The committee adjourned.

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SECOND SESSION—TWENTY-NINTH PARLIAMENT

1974

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

Issue No. 3

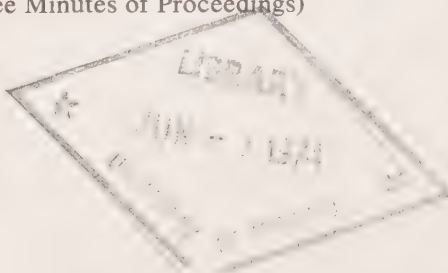
WEDNESDAY, MAY 1, 1974

Second and Final Proceedings on Bill C-6, intituled:

“An Act to amend the National Parks Act”

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Beaubien	Laing
Blois	Laird
Buckwold	Lang
Connolly (<i>Ottawa West</i>)	Macnaughton
Cook	*Martin
Desruisseaux	McIlraith
*Flynn	Molson
Gélinas	Smith
Haig	Sullivan
Hayden	van Roggen
Hays	Walker—(20)

**Ex officio members*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 23, 1974:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Laing, P.C., seconded by the Honourable Senator Cook, for the second reading of the Bill C-6, intituled: "An Act to amend the National Parks Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Martin, P.C., that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, May 1, 1974.

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 3.30 p.m. to further consider the following:

Bill C-6 "An Act to amend the National Parks Act".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Buckwold, Cook, Desruisseaux, Gélinas, Haig, Laing, Macnaughton, Martin and Smith. (12)

Present; not of the Committee: The Honourable Senators Benidickson, Lapointe, Greene and Goldenberg. (4)

In attendance: E. R. Hopkins, Law Clerk and Parliamentary Counsel.

Witnesses:

Department of Indian Affairs and Northern Development:

The Honourable Jean Chrétien,
Minister;

Mr. S. F. Kun,
Director,
National Parks Branch.

After discussion and upon motion by the Honourable Senator Gélinas it was *Resolved* that the said Bill be reported without amendment, but that recommendations as outlined in the discussion be included as a part of the Report.

At 4.05 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

Report of the Committee

Thursday, May 2, 1974.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-6, intituled: "An Act to amend the National Parks Act", has, in obedience to the order of reference of Tuesday, April 23, 1974, examined the said Bill and now reports the same without amendment.

In addition, your Committee desires to state that, despite the urgency of this legislation in the present circumstances, it should at once indicate its opposition to the principle of clause 2 of Bill C-6, and that it should serve notice that the clause will not be taken as a precedent in so far as the Senate is concerned and that such provisions, which fail to recognize sound parliamentary principles, should not be included in future. Moreover, the inconsistency between clause 2 and clause 10 of the Bill should also be noted. Obviously the establishment of new parks and the significant enlargement of existing parks should be dealt with on the same basis.

However, the Committee considers that the availability of the beneficial provisions of the Bill should not, at this time, be delayed because of the defects noted above.

Respectfully submitted.

Salter A. Hayden,
Chairman.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, May 1, 1974.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-6, to amend the National Parks Act, met this day at 3.30 p.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, it will be recalled that we met a week ago to consider this bill. In view of certain questions that were raised, we outlined the position of the committee so that the minister could have that information available. We decided to adjourn the meeting until today, to give the minister an opportunity to appear. He is with us today.

It will be recalled that a question was raised in connection with clause 2 of the bill, dealing with additions to parks which are created and set out in the schedule to the bill. It was the feeling of the committee that the provision, and all the lengthy procedures involved in that clause, were completely unnecessary.

We wanted to hear the minister's view on that. If we wish simply to provide that an insignificant area can be added to an existing park by proclamation by the Governor in Council, rather than by legislation, that is fine; but the provision of a new park would have to be by legislation. The minister already knows the alternative courses that were discussed.

Senator Laing, as sponsor of the bill, have you anything to discuss before we hear the minister on the point which brings him here?

Senator Laing: I am sorry that I was not present last week, but there was a reason for it. I am a resident of Vancouver and the transportation service was such that I would have had to walk in order to get here. However, I read our proceedings. The point raised in connection with clause 2 seems to revolve around the idea that there is an old-fashioned concept in the Senate that Parliament is resident in this entire building and not just at one end of it. I think that point is well taken.

I did not deal with that when speaking of the bill in the house, because I overlooked it. Precedents could be established here, in respect of future legislation, that could put us in conflict with the other place.

The Chairman: As I see it, there is only one way in which we can avoid establishing a precedent in dealing with this bill, if there is any emergency. The report could contain a recital of all the circumstances, indicating why the bill is approved notwithstanding this defect, and indicating that it is not a precedent but that there are special circumstances. That is one course.

Another is to strike out clause 2—the bill could live without it—or we could limit clause 2 by striking out

everything in the bill except that which provides that the Governor in Council, by proclamation, can add an insignificant area in relation to an existing park. Those are the various courses of action.

As the minister is available, he should have the opportunity of explaining the situation, and what he would appreciate our doing, if we could do it.

Hon. Jean Chrétien, Minister of Indian Affairs and Northern Development: Thank you, Mr. Chairman and senators. I read the proceedings of your committee meeting of last week. I listened to my predecessor, Senator Laing, and I cannot disagree with the committee. I argued against the clause in committee, because there was another fundamental problem.

This procedure should not be used for one moment. When we want to establish a national park, or add substantial lands to a park, we have to make a deal with the provincial government.

A policy was established by my predecessor that when land is purchased for a national park, the cost is shared with the provincial government.

It is a provincial decision to transfer crown provincial land, or to transfer to the federal government, land they have acquired. The procedure provided in clause 2 will enable a member of the committee of the house to discuss the validity of the judgment of the provincial government—and that is not proper.

As I say, I have argued against that clause in committee. For example, I am currently in negotiation with the premier of a province who, in the wisdom of his government, is contemplating turning over a large piece of land as an addition to an existing national park.

The land in question is provincial crown land. The premier and government of the province are leaning in the direction of setting aside the land for the purpose of a national park. They feel that is the best possible use for the land.

If the premier decided to turn over many square miles of that land to the federal government for perpetual conservation under the National Parks Act, do you think it would be proper for a member of the committee in the other place, or of the Senate committee, to tell the premier of a province, "You are not being wise"? The act exists. Land for park purposes is controlled by that act, it is up to the provincial government to transfer to us provincial land. Of course, the minister can help by being aggressive, and so on.

For example, both my predecessor and I have been very much involved in the creation of new national parks. In the last five years we have managed to establish 10 new national parks. They are not all included in the bill, for reasons that I will explain later.

When we have persuaded a provincial government to transfer land to the Crown, it would not be proper for any committee of the house to discuss the wisdom of the premier, whatever the colour of his party.

I have argued against that clause, but through no fault of mine, we are in a minority position in the House of Commons.

Senator Flynn: That is not your fault.

Hon. Mr. Chrétien: No. The clause was introduced by a member of your party simply to try to score political points, to create the impression that he was concerned for the people.

If a provincial government is wrong, it is up to the voters of that province to tell the government that it is wrong; but it is not for any senator or member of the house to tell the government so, if a proper Constitution exists in this country.

I have argued that the clause was not a good one, but we were defeated in committee. I said that I could live with it. It serves no good purpose and it is an embarrassment.

I am glad that the Senate committee has recognized that point. We could delete the clause, but we are in a bind. There could be an election any day. We are in a minority position. If an election is called next week, the bill would not become law and the work of my predecessor in connection with national parks in British Columbia would not be written into the law because of a small technicality.

I know that you will have another crack at it, probably next year or the year after, because I am still negotiating for new national parks.

We are negotiating the creation of the Pukaskwa National Park in Ontario. The land has not yet been transferred to us because the Government of Ontario has not been able to resolve all the difficulties involved. They are, however, committed to the idea of transferring the land to us. An agreement will soon be reached, which means that next year or the year after we will return with another bill creating other areas as national parks, and you will be able to have another crack at this clause. If the Senate does not pass the bill as it stands now, it will simply be an embarrassment. The committee's objection to clause 2 is a valid one, but it is not a fundamental clause. I would urge honourable senators to look at the validity of such a course.

This legislation will enable the federal government to set up the first three national parks ever in the North and the first two national parks ever in the province of Quebec. I must say, it was not an easy task to get these parks in Quebec. My predecessors over the last 50 years have been trying to do so. It is due to hard work that we managed to get them this time, so I am very keen on having this legislation finalized by the federal government. Once this legislation is passed, it will allow us to proceed with the establishment of Forillon National Park and La Mauricie National Park.

For those reasons I feel quite strongly that we should proceed with this bill, notwithstanding this technicality with which you are unhappy. I, too, am unhappy with it. I do not think there is any real need for it. However, if the committee amends the bill, it means it will have to go back to the House of Commons, and if there is an election within the next few weeks, the legislation in respect of those parks will not be finalized in this Parliament.

I would urge you, therefore, to pass this bill as it now stands. When the legislation in respect of the other parks comes down in a year or two, the Senate can have another crack at scrapping that clause.

The Chairman: Mr. Minister, in the light of what you have just said, it would appear that there is unanimity of thought as between yourself and members of this committee that clause 2 of the bill should be deleted. Having said that, the question then becomes one of what course the committee should take.

On the other side of the coin, you have impressed upon us, Mr. Minister, that there is some urgency, in the sense you have described it, in building up a national parks system. The acquisition of national parks and the loss of impetus and momentum in the work that has been done are things, I suppose, which you have to look at. But we have to look at our position too. If we agree that clause 2 should not be in the bill, then we cannot report the bill without amendment, unless we adopt a practice, which we have done in the past, whereby in our report we include a recital of all the facts to indicate that the circumstances were such that we decided to report the bill without amendment, even though there was a clause or there were clauses in it which we felt were wrong and should not be in the bill. That is face-saving, but it is also a little more than that. It gets away from the suggestion that we are establishing a precedent in so far as the position of the Senate is concerned.

My position last time, as you will recall, was that clause 2 of the bill serves no purpose. That is still my position. I thought we could whittle it down somewhat by limiting the power of the Governor in Council, by proclamation, to the addition of "insignificant areas" to existing parks. But any amendment, whatever the scope of it, will have the same effect.

The question we have to decide, honourable senators, is whether or not we are impressed by what the minister has told us, to the extent that we should pass this bill without amendment to allow him to carry out his work. We have to decide whether we are prepared to set forth our position in the recital to our report indicating our reluctance to pass the bill without amendment but, in view of the circumstances and without any limitation on our right to deal otherwise with any new bill that may come before us on this subject, our willingness to pass the bill.

Those are the two courses we can take. I do not think there is any discussion on the merits at this time. Everyone seems to agree that clause 2 has no purpose in the bill.

Senator Gélinas: Mr. Chairman, I think the formula you have just described certainly settles everything as far as I am concerned. I would be prepared to move that the bill be passed—

Senator Flynn: Before we entertain a motion, I should like to put a few points. First of all, Mr. Chairman, I should like to mention that I taught law to the minister and possibly I infused in him the fighting spirit he has shown here this afternoon.

The second point I want to make is that I do not want useless confrontations with the House of Commons, no more than the minister would want such a confrontation. However, I would like the minister to clarify a few matters for me.

When this legislation came before us in the last Parliament, this committee, in conference with the minister and

his officials, amended the bill to allow for the publication in the *Canada Gazette* of a notice of intention to issue a proclamation, so that those interested one way or the other could express their views before a proclamation would be issued. By doing that we allowed for all interests in the establishment of a national park to be taken into consideration. The publication of such a notice in the *Canada Gazette*, I think the minister will agree, was a good procedure.

Hon. Mr. Chrétien: Yes, I think it was an excellent way of letting the people know what was going on. I have no objection to informing people of the establishment of a national park.

Senator Flynn: The minister agrees that the clause referring the problem to a standing committee of the other place serves no purpose. I think it is a matter of policy for the federal government to obtain title to the land from the province concerned, but that is not necessarily the case in all circumstances. Under clause 2 of the bill it is also provided that:

(3) The Governor in Council may authorize the Minister to purchase, expropriate or otherwise acquire any lands or interests therein for the purposes of a park.

In some cases, therefore, your department, Mr. Minister, with the authorization of the Governor in Council, may expropriate land for the establishment or enlargement of a park.

Hon. Mr. Chrétien: Yes, we do that when we want to acquire a small amount of property to add to an existing park. However, when we want to add a significant addition to a park, we consult with the provincial government concerned. We have always followed that course.

Senator Flynn: But it is a matter of policy to have the province concerned provide title to the land?

Hon. Mr. Chrétien: Yes. The amendment which your committee put forward, to provide for publication in the *Canada Gazette* of a notice of intention to issue a proclamation, was not in the old act. If one of my successors decides to acquire a large area of land without the approval of the provincial government concerned, he will not be able to do so until publication of a notice to issue a proclamation to that effect is published in the *Canada Gazette*. So the provincial government concerned will be alerted at that time and can take appropriate steps.

Senator Flynn: That brings me to my last point, Mr. Chairman, which is in connection with clause 10 of the bill. Clause 10. (1) reads as follows:

Subject to subsection (2), the Governor in Council may, by proclamation, set aside as a National Park of Canada, under a name designated therein, any lands

And the lands are set out in clause 10.1(a) through to (e). When a proclamation is issued under that clause, if this bill carries, the procedure outlined in clause 2 will not apply.

The Chairman: That is right.

Hon. Mr. Chrétien: Those parks are already in operation. They are not in the act.

Senator Flynn: They are not in the act?

Hon. Mr. Chrétien: They were not in the old act. I can give you an example of one national park that has been in operation for 20 years, that being Terra Nova National Park in Newfoundland.

Senator Flynn: But a description of the boundaries is not to be found in the schedule.

Hon. Mr. Chrétien: Yes, it is.

Senator Flynn: No, certainly not.

Hon. Mr. Chrétien: Read clause 8, senator. It deals with the new description of Terra Nova National Park.

Senator Flynn: Terra Nova, yes, but I am speaking of the parks mentioned in clause 10 of the bill. For example, in the counties of Champlain and St. Maurice, the boundaries of those parks have not yet been finally determined—not by any act of Parliament, in any event.

Hon. Mr. Chrétien: We know where.

Senator Flynn: We know where.

The Chairman: Clause 10 is not a general empowering clause. Subclause (2) says:

The Governor in Council may issue a proclamation under subsection (1) . . .

Subsection (1) is the one which indicates the lands, and it is in relation to those specific land he may do that.

Senator Flynn: I agree. If you will give a chance to complete my argument, Mr. Chairman, what I want to say is this. Under the present wording of clause 2, for the enlargement of any park, there has to be published a notice in the *Canada Gazette*. Under clause 10, for the establishment of these new parks, which have not already been established by law—they may have been established in fact but not by law—there is no requirement to publish a notice in the *Canada Gazette*.

The Chairman: It does provide that.

Senator Goldenberg: Subclause (2)(c).

Hon. Mr. Chrétien: Line 40:

(c) notice of intention to issue a proclamation under subsection (1), together with a description of the lands proposed to be described in the proclamation, . . .

Senator Flynn: I agree with that. The point I wanted to make was that only this notice has to be given, and there is no reference to the standing committee.

Hon. Mr. Chrétien: No, not for those parks.

Senator Flynn: Where is the justification for this?

Hon. Mr. Chrétien: I argued with the members of the committee of the other place, and I could convince them at least that there was no purpose at this time, when the land has been turned over to the federal government and there are employees working there and roads being constructed, in coming after the work has started to question the judgment of a provincial government.

Senator Flynn: The same argument should have been accepted under clause 2.

Hon. Mr. Chrétien: Yes. They accepted it on clause 10 and did not accept it on clause 2. I made exactly the same

argument. I do not know what their feeling was, but my feeling is the same about the two clauses.

Senator Flynn: That is the only point I wanted to put on the record. It seems illogical. If we pass the bill as it is, it is a compromise. I agree with the chairman that we should recite our objection, and this one too, if the committee is agreeable, that there is a difference of procedure provided in clauses 2 and 10.

Hon. Mr. Chrétien: I have been consistent myself on both clause 2 and clause 10. I know that you are consistent on both clause 2 and clause 10. The only people who have not been consistent are the members of Parliament of your party.

Senator Flynn: I do not think they have a majority at the present time. Does the minister suggest that at that time the other opposition parties sided with us?

Hon. Mr. Chrétien: The NDP sided with you, and they did not show any more judgment than the members of your party.

Senator Flynn: This is one case where you did not have to prostitute yourself, as you have done in other cases.

Hon. Mr. Chrétien: I stuck to my guns and I am living with that clause.

Senator Molson: I agree with Senator Flynn that confrontations with the other place are highly undesirable. I am completely sympathetic with the minister. He knows my party affiliations as well as I do, and I can say that I have been very favourably impressed by the minister in his department, and I would like to congratulate him on what he has done in that department. In fact, I am surprised when he tells us that his party has not a majority. I should think that with him in it, it should have. However, the point that we are dealing with in this bill, which happens to be his responsibility, once again brings up a matter that is another slight step in the elimination of the upper chamber of this Parliament under the Canadian constitutional system. I do not know whether we have had it now three or four times. We had it on the tax review bill. We were told, "Don't send back the wire tapping bill!" Now we have it on this bill. Next month we will have it on something else. As much as I am sympathetic with getting this bill into effect, I cannot agree with that process by which this part of Parliament is constantly being cut down in its responsibilities. To that extent I must vote against the motion that is before the committee.

Hon. Mr. Chrétien: If there is an offender, it is not me. The first time I introduced the bill I came to the Senate. I think you should consider that in your voting.

Senator Molson: I agree with you.

Senator Flynn: We are not arguing against the Minister.

The Chairman: The motion is that we report the bill without amendment, but that we include the recitals.

Senator Flynn: And our objections.

The Chairman: And our objections, and why we have reported the bill without amendment.

Senator Greene: Before the motion is put, being a stranger to this committee, and having no right to vote on the motion, I am wondering whether your suggestion could be strengthened and a recommendation put in the report that at the next revision of the act serious consideration be given to the fundamental amendment of or the deletion of clause 2. Would that strong recommendation embarrass the minister in getting his bill through? Since the bill is being passed, I should not think it would, and it might give more teeth to the provisos with which we pass the bill. If I may help Senator Molson—and this might impress Senator Flynn—the right honourable member for Prince Albert in the other place might say that this bill is emasculating the upper house. I think that is his choice of words in a situation such as this.

Senator Cook: I want to speak one way and vote the other. If ever a bill needed the benefit of sober, second thought, this is such a bill. I agree entirely with Senator Molson. On the other hand, I suppose that at the next session we could bring in an amending bill. I am persuaded by what the minister says, and I do not want to do anything at all that might have very serious repercussions, if we amend the bill now. I must confess, however, that I speak one way and I will vote the other.

Senator Desruisseaux: I hope the same thing does not happen that happened once before when the minister changed ministries. It was forgotten then.

Senator Flynn: The problem is, the Senate having taken a stand, when the revision of the act comes before us the house will be warned, if the bill is initiated there, that we will not be able to accept anything but a solution to this problem.

The Chairman: That is right.

Hon. Mr. Chrétien: I can tell you that if I am the minister when there is another bill introduced, clause 2 will not be in it.

Senator Flynn: I have no objection to your remaining the minister as long as we have the same government, but I hope we change the government.

Hon. Mr. Chrétien: Hope is very far from reality in these circumstances.

Senator Flynn: In both cases.

The Chairman: I put the motion that we report the bill without amendment, with the recitals that we have discussed here today incorporated in the report.

Hon. Senators: Agreed.

The Chairman: The motion to report the bill in the form we have discussed, without amendment, is carried.

I will be presenting a report tomorrow. I have to draft it. May I show it to as many of the senators as I am able, to approve of the form?

Hon. Senators: Agreed.

The committee adjourned.



SECOND SESSION—TWENTY-NINTH PARLIAMENT

1974

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

Issue No. 4

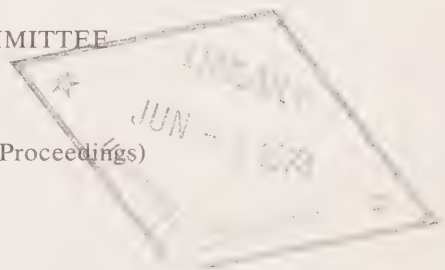
THURSDAY, MAY 2, 1974

Complete Proceedings on Bill C-14, intituled:

“An Act to amend the Farm Improvement Loans Act, the Small Businesses Loans Act
and the Fisheries Improvement Loans Act”.

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Beaubien	Laing
Blois	Laird
Buckwold	Lang
Connolly (<i>Ottawa West</i>)	Macnaughton
Cook	*Martin
Desruisseaux	McIlraith
*Flynn	Molson
Gélinas	Smith
Haig	Sullivan
Hayden	van Roggen
Hays	Walker—(20)

* *Ex officio members*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 25, 1974:

“Pusuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Molgat, seconded by the Honourable Senator Inman, for the second reading of the Bill C-14, intituled: “An Act to amend the Farm Improvement Loans Act, the Small Businesses Loans Act and the Fisheries Improvement Loans Act”.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Molgat moved, seconded by the Honourable Senator Langlois, that the Bill be referred to the Standing Senate Committee on banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.”

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, May 2, 1974.

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to consider the following:

Bill C-14 "An Act to amend the Farm Improvement Loans Act, the Small Businesses Loans Act and the Fisheries Improvement Loans Act".

Present: The Honourable Senator Hayden (*Chairman*), Buckwold, Cook, Desruisseaux, Gélinas, Hays, Laing, Molson and Smith. (9)

Present; not of the Committee: The Honourable Senator Benidickson. (1)

In attendance: E. R. Hopkins, Law Clerk and Parliamentary Counsel.

WITNESSES:

Department of Finance:

Government Finance-Loans,
Investments and Guarantees.

Mr. Richard C. Monk,
Assistant Director;

Mr. F. C. Passy,
Chief.
Guaranteed Loans Administration.

After discussion, and upon motion of the Honourable Senator Smith it was *Resolved* to report the said Bill without amendment.

At 10.10 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

Report of the Committee

Thursday, May 2, 1974.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-14, intituled: "An Act to amend the Farm Improvement Loans Act, the Small Businesses Loans Act and the Fisheries Improvement Loans Act", has, in obedience to the order of reference of Thursday, April 25, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,
Chairman.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Thursday, May 2, 1974.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-14, to amend the Farm Improvement Loans Act, the Small Businesses Loans Act and the Fisheries Improvement Loans Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators we have before us Bill C-14 and we have as witnesses Mr. Richard C. Monk, Assistant Director, Government Finance—Loans, Investments and Guarantees; and Mr. F. C. Passy, Chief, Guaranteed Loans Administration both of the Department of Finance.

Quite a full explanation of this bill has already been given in the Senate, and I think that, unless anyone has other ideas, we should open our proceedings with a statement, in a summary way, from the witnesses who are here as to the purpose and operation of this bill. Mr. Monk, will you lead off?

Mr. Richard C. Monk, Assistant Director, Government Finance—Loans, Investments and Guarantees, Department of Finance: Thank you, Mr. Chairman. As you know, these three acts come to an end on June 30, 1974, if not previously renewed. As a result of that deadline, the department undertook a review of the legislation, consulting various other government departments and private groups, and having regard to correspondence and so on that they had received over the years, to decide what changes would be required to bring them up to date.

In the course of that review we focused on the major issues which had come to our attention—things like the adequacy of the loan limit, the purposes for which loans are made available, the eligible lenders and so on. As a result of that review we put up the proposals which are reflected in the bill and which, to a very large extent, I think, meet the kind of suggestions made in the criticisms of the acts by the various people we consulted.

Senator Laing: These are not direct loans?

Mr. Monk: No, they are guaranteed loans. This is a program under which the banks do the lending.

Senator Laing: What is the amount guaranteed? Is it 90 per cent?

Mr. Monk: Yes. The Minister of Finance will pay 10 per cent of the losses incurred on loans.

Senator Laing: Why do we now have the Alberta Treasury branches mentioned in this?

Mr. Monk: The last time this matter was debated—and I think it was in 1970—a number of members from Alberta

drew our attention to the fact that the Alberta Treasury branches were important lenders in that province and that they should be included. Subsequently we had representations from the Province of Alberta itself. I guess it is fairly well known that people from that region consider that this is a fairly important lending institution and has a large number of branches throughout the province. It has sizeable loans and there seems to be every reason, on that basis, for including it as a reputable lender and helping to expand the scope.

Senator Laing: Do you have any figures on the totals of loans made under the tree acts?

Mr. Monk: The total loans made for all times?

Senator Laing: Yes, the total loans guaranteed under the bill.

Mr. Monk: Perhaps Mr. Passy has that information.

Mr. F. C. Passy, Chief, Guaranteed Loans Administration, Government Finance—Loans, Investment and Guarantees, Department of Finance: The total outstanding figure?

Senator Laing: Yes.

Mr. Passy: I can give the totals outstanding as at the end of December 1972. I am sorry I do not have more recent figures. Under the small businesses loans program there was a total of \$75 million outstanding as of December 31, 1972; under the farm improvement loans program there was \$375 million outstanding at the same date. So far as the fisheries improvement loans program is concerned, I do not appear to have an outstanding figure for that. I am sorry.

Senator Laing: To what extent have we been required to come up with the guarantee?

Mr. Passy: What percentage?

Senator Laing: Yes.

Mr. Passy: The loss ratio on all these programs is very small—less than one-fifth of 1 per cent of the loans made.

Senator Desruisseaux: And how is that distributed over the various types of loans?

Mr. Passy: In the case of the farm program I think it is less than one-tenth of 1 per cent; for small businesses it is less than one-fifth of 1 per cent; and under the fisheries program it is less than one-fifth of 1 per cent.

Senator Cook: How long is the period of the loans?

Mr. Passy: It depends on the purpose for which the loan is made, but the maximum term is 10 years for a loan under the farm program, except for the purchase of land when it is 15 years.

Senator Cook: Taking the 10-year ones, at the end of the period is there any rollover?

Mr. Passy: There is provision in all the acts for the extension of the term if the situation warrants it, with the approval of the minister. That is to say that the lender must apply to the Guaranteed Loans Administration who, on behalf of the minister, will authorize an extension beyond the 10 years. This is not common, but it certainly happens.

Senator Cook: That is the question I was going to ask. It is not common?

Mr. Passy: No, most of the terms of the loans are of the order of three, four or five years and, therefore, the bank has the authority within the legislation to extend that term up to 10 years. So most of the three-, four- or five-year, or additional term loans can be satisfied within the bank's power to extend up to 10 years. It would only be relatively few that would require the minister's approval to extend the maximum period in the act.

The Chairman: With the right in the banks to extend a three-, four- or five-year loan up to 10 years, does the guarantee of the government supporting this loan go along with the action by the bank in extending it?

Mr. Passy: So long as it is within the 10-year period. If the bank were to extend it beyond 10 years without the approval of the minister, then I suppose that theoretically the guarantee would stop at the 10 years.

The Chairman: But the bank does not need any approval from the minister to extend a loan period from whatever the initial period was to a total period of 10 years?

Mr. Passy: That is correct.

Senator Smith: With reference to the fisheries improvement loans, as I understand the situation from what you have said before, the maximum authority the banks had to issue a loan under the guarantee system was for a period up to 10 years.

Mr. Passy: That is right.

Senator Smith: And it is up to their judgment to decide what the shorter period shall be—and we can understand that.

Mr. Passy: Yes.

Senator Smith: And if, in general, the circumstances seem to indicate that a longer term would be productive of benefit to the industry, then that term can be extended. How much above 10 years, with the minister's approval, can it be extended?

Mr. Passy: There is no limit. It would depend on circumstances. A normal case we get is for extension for a further two years or so. This is usually sufficient.

Senator Smith: Then with the exception of the purchase of land under the farm improvement loans program, is there some extraordinary character about a fisheries improvement loan that would be equal to the restrictions or the availability of a longer term in the fisheries improvement? A fishing boat, for example, beyond 10 years would not be, in my view, an example of good business management. So what else is there that fishermen would be involved in?

Mr. Passy: Well, the situation, if my memory serves me correctly, where this sort of thing arises is where a farmer, fisherman or small businessman runs into specific difficulties during the term of his loan, and for this reason will be unable to complete his previous agreement. At that point he would, presumably, go into the bank and say, "Look, I cannot meet my agreement. I would like a revision of my terms". In that situation the bank has the authority to revise the terms, and if the term, for example, had originally been ten years, then it may only be a matter of revising his terms for more frequent, lower payments within the same total term. Various permutations and combinations could be arrived at between the borrower and the bank manager before the minister would be involved. It is only where these requirements of revision would exceed the maximum laid down in the act that the minister would be involved.

Senator Smith: I understand, in general, from what you have said, that this is pretty close to normal banking practice, then.

Senator Laing: Does this guarantee the lowest possible business rate current?

Mr. Passy: The lowest possible interest rate?

Senator Laing: Interest rate, yes.

Mr. Passy: The interest rate under these programs is set down by a formula which relates the maximum rate that may be charged to the yield on certain Government of Canada bonds. The guarantee is valid so long as the rate in the loan agreement made between the bank and the borrower does not exceed the formula rate.

Senator Laing: In other words, the rate would be as favourable as the best business rate, or even better?

Mr. Passy: Better, yes.

Mr. Monk: It is much better at the moment.

Senator Laing: Have you any idea as to the regional distribution of the loans?

Mr. Passy: Yes. We have a regional distribution. I will have to give them by program again.

Senator Laing: Yes; just generally will do.

Mr. Passy: I do not have these in percentages. Is this what you would like?

Senator Laing: Yes.

Mr. Passy: Perhaps I could say that the vast bulk of the farm loans are, of course, made in Alberta and Saskatchewan, and there are some 70 per cent of the loans that are made in Alberta and Saskatchewan under the farm program. These are the main farming areas, of course. As regards the other provinces, the other 30 per cent is distributed fairly evenly among them.

Senator Buckwold: May I ask what percentage of that 70 per cent is Saskatchewan rather than Alberta?

Senator Hays: Most of it.

Mr. Passy: Yes. Getting on to 40 per cent in Saskatchewan.

Senator Buckwold: Of all the loans, 40 per cent is Saskatchewan.

Mr. Passy: Under the small business loans program—these figures that I am using here are for last year—about 40-odd per cent, perhaps 42 per cent of the loans under the small business program last year were made in Quebec. Ontario and British Columbia get the lion's share of the balance, amounting to about just over one-quarter of the loans in each case going to British Columbia and Ontario. The balance is split fairly evenly among Saskatchewan, Manitoba and Alberta, with relatively small quantities of small business loans going to the Maritimes, or the Atlantic provinces.

Senator Molson: And fisheries?

Mr. Passy: I expect the distribution is primarily to those provinces bordering the sea. British Columbia gets about two-fifths of the loans, Nova Scotia gets just over one-fifth, as does Prince Edward Island. Of course the prairie provinces get relatively few. Alberta had two last year, I notice. Ontario and Quebec get about 2 per cent of the loans.

Senator Laing: Thank you.

Senator Molson: Mr. Chairman, might I ask if the definition of "lender" includes anything else besides banks and the Province of Alberta Treasury Branch, now that they have added that? I do not have the original act here. Are there any caisses populaires?

Mr. Passy: These are already eligible.

Senator Molson: Yes, but I say, what else besides the banks and the Province of Alberta Treasury Branch are approved lenders?

Mr. Passy: Well, credit unions, loan, trust and insurance companies, and other co-operative type lenders are eligible to apply for designation by the Minister of Finance under the program. Under the farm program, 131 credit unions have been designated by the minister. Under the small business program, 27 credit unions have been designated. Under the fisheries program, two credit unions have been designated. Only one trust company has been designated. It has applied under the farms program, and it was designated.

Senator Molson: And no insurance companies?

Mr. Passy: None has applied. They are eligible to apply, but none has done so.

Senator Hays: Mr. Chairman, could Mr. Passy explain that formula? Supposing government bonds are yielding 7½ or 8 per cent, just for purposes of discussion, what kind of formula would it be? What would the interest rate be, roughly?

Mr. Passy: In the case of the farm program for land purchase purposes, it is maturing in one to ten years, and—

Mr. Monk: For land it is five to ten; for all other purposes it is one to ten.

Mr. Passy: Yes. Over a six-month averaging period, before October 1 or April 1. These are the two change dates when the rate is changed, plus one per cent.

Senator Hays: Plus one per cent? That is over the cost of the government yield?

Mr. Passy: One per cent of the government yield on the Government of Canada bonds, yes.

Senator Hays: May I ask another question? If a farmer borrows, say, \$50,000, and a proportion of that is eligible under this bill and the banker says, "Well, the rate under the small business loans program is a certain amount," does he have to loan that portion at the interest rate that is applicable under this bill?

Mr. Monk: Well, he does not have to make a loan at all, of course.

Senator Hays: Assuming he has made a loan of \$50,000. Then the farmer says to him, "Okay. Now you're charging me 11 per cent," say, "or 10½ per cent." It is a short-term loan, and he says, "Well, you know, I'm familiar with some of the government legislation. Ten thousand dollars of this is eligible under this guarantee and the rate is one per cent over," and so the banker has already agreed to make the loan to him at 7 per cent. He does not have to loan this money, as I understand it.

Mr. Monk: Well, if the contract has already been made, refinancing is not permitted. If it is a question of refinancing a loan that has already been paid at 10 or 11 per cent, that is not permitted under the legislation.

Senator Hays: Well, here he is talking to the banker, the banker has already agreed to give him \$50,000, and he says, "I'll give you \$50,000 at 11 per cent," and he says, "\$10,000 or \$15,000 of this is eligible under the small business loans program." It used to be that he would go in to see a banker, and the banker would say, "You will get \$5,000 of it at 4½ per cent, and you will get \$10,000 at 6½," and so on. The Bank of Nova Scotia used to do that, but they do not do that any more. I am wondering if, the more substantial the loan, the less likely he is to get the benefit of the guarantee and the lower interest rates.

Mr. Monk: As I said, if a borrower said to the banker, "Look, I would like part of this under the Small Businesses Loans Act," or if he is a farmer, under the Farm Improvement Loans Act, and so on, the bank is not compelled to loan him anything under these three programs. It may choose to do so because it feels that this is a good way of keeping that man as a client; but, on the other hand, if it feels that the person asking for the loan is capable of carrying a higher rate of interest, it might well and it has the right to insist, if the borrower wants the loan, that he pay the usual commercial rate.

Senator Cook: You could give him the \$10,000 at the guaranteed rate and just the ordinary rate on the other \$40,000, and leave it at that.

Mr. Passy: I do not think the legislation would permit him to take just a portion of the loan of \$50,000, as you are suggesting, and say that \$10,000 of it would be under this program. It seems to me the legislation requires that the loan may be made for a certain purpose. If there is one purpose in this \$50,000—for example, \$10,000 of it for the purchase of a tractor—then he could make a loan under this program for that purpose in order to purchase the tractor. But I do not think, if the \$50,000 was all being spent on one project, that he could take \$10,000 of that and put it under here.

Senator Hays: You could define it any way you want; you could take bulls and heifers or you could take chickens and turkeys.

Senator Cook: Well, you would have to have two loans.

Senator Hays: Yes.

Senator Cook: One for \$10,000 and one for \$40,000.

Senator Buckwold: I am interested in the actual physical actions that take place when farmers go in to make loans. Does the government in any way subsidize this program, other than by a banker's guarantee?

Mr. Monk: No, I do not think you could say it subsidizes the program. It offers a preferential rate, of course, using its credit power, and in that sense it gives assistance.

Senator Buckwold: The farmer goes to a bank or credit union—and I would suppose most of them go to banks—and applies for a loan, and the bank, if it accepts his application, lends him the money at about 1 per cent higher than the average government bond yield. Why would banks do that when we are in a tight money period at the moment? Why are they going to lend to him at 8½ per cent when they are paying more than that for deposits? Are you concerned that the source of supply of loans during this period of high interest rates which we have now may dry up, and that farmers may be turned down because of their lack of ability to borrow at the higher rates?

Mr. Monk: Yes, there is some concern on that point. Back in 1968, for instance, when we did not have this kind of formula, as I recall, the lending rate which the banks were permitted to charge became fairly far out of line with the commercial rates, and lending under the Farm Improvement Loans Act in 1968 dropped rather drastically down to \$40 million. Subsequently, we got on to this formula, and after that, and until very recently, the rate which banks were entitled to charge was not very far out of line from the bank prime rate. As a matter of fact, it was less in most of the periods since 1970.

Senator Buckwold: But right now it is not. Do you feel that if a farmer went into a bank or any financial institution—it is not limited just to banks—to borrow money under this program, he would be greeted with open arms?

Mr. Passy: Well, up until the end of last year. Of course, last year was the best year that has ever happened under these programs.

Senator Buckwold: Of course, the situation was a little bit different last year.

Mr. Passy: Last year's experience would seem to imply that the banks are lending. But it is true that this year the rates have begun to pull apart again, and, certainly, early returns this year indicate some lowering of the rate of lending.

Senator Buckwold: A spectacular change has taken place within the last few weeks, and if we are into a period of relatively high interest rates, which looks to be the situation for a period of time, then is any action going to be taken by the government to assure farmers that these loans will be available to them, because the source, in my opinion, at the moment may dry up unless you pay the price for the money.

I would like a comment on that. As a Saskatchewan senator I am concerned on this right now, because 40 per cent of your loans come from our area and the farmers there are constantly speaking of the difficulty they have in

getting money, despite the fact that the legislative program looks great.

The Chairman: Senator Buckwold, the point you are making may get to be a question of policy. If there is something afoot or in the air at the present time to meet this situation, these witnesses might or might not be able to tell us.

Senator Buckwold: Then can I change the line of questioning a little? Do the officials administering the Farm Improvement Loans Act watch this very carefully? Do they, in fact, act to make funds available, or are they just going to let the source dry up?

Mr. Monk: We do watch it very carefully, sir. The minister, of course, is aware every quarter, when he relates to the public on what the lending activity has been and on what the situation is, because he constantly gets letters. It would, of course, be up to him to decide whether action should be taken, if the situation seems to be deteriorating rapidly.

You may recall that last July, after a long period in which the rates under these acts had been frozen and some concern arose within the department that the banks were becoming reluctant to lend, the president of the Canadian Bankers Association made a speech in Halifax in which he indicated that this was becoming a matter of concern to the banks. The minister then took action—the government took action to unfreeze the rate, which put it back on the formula.

As you say, of course, interest rates have risen so rapidly recently that this is again becoming a cause of concern.

Senator Buckwold: I think you have the point that I am trying to make, which is that I am concerned that there will be a very severe restriction in the availability of loan capital from financial institutions to farmers, unless something is done to improve the rate to the lender—not the borrower—in order to make the funds available. That is why my first question was whether any subsidy was available with the government moving in, in fact subsidizing the rate, to keep it low for those who need it. Your answer is no. I hope some day there will be.

Senator Desruisseaux: Has there been any request for a review of the rates lately?

Mr. Monk: The banks themselves, during our general review of the program, suggest that we should use a different formula. In effect, they want whatever formula you might produce which would give them a higher rate. On the one hand, you have, I suppose, to offer a rate to the types of people who use these programs, which seems reasonable. It seems preferential. It is preferential, in fact. At the same time, one must be careful to provide the banks with something which will attract them into it. Most of the time, I think since 1968, we have been successful in doing that. I think we may be faced with a rather special situation now as a result of the very rapidly rising rates during the last six months.

Senator Desruisseaux: What is the percentage of loans that have been rejected over the past two or three years?

Mr. Monk: I think I am correct in saying that we do not have any statistics from the banks. You would need to have information from all of the chartered banks on this question. It would require a considerable amount of effort

on their part, you know, to sort it out and turn it in. We do not get that kind of information.

Senator Molson: Supplementary to that, have you had any complaints from members of the public, or farming or small business communities, that the banks are not providing them with funds?

Mr. Monk: Yes, I think Mr. Passy, who is more deeply involved in the administration, would be able to answer that in more detail, but there have been some complaints.

Mr. Passy: Perhaps I could add that we do get complaints from potential borrowers who claim they have been turned down. We do look at these and investigate them with the bank concerned. I would have to say that in the vast majority of cases we find that the reason for the rejection is not directly related to the interest rate. It is often due to the fact that the project is not a viable one, or it relates to the credit history of the borrower. He is very reluctant to write to us and say, "I didn't get the loan because I wasn't a good risk." So we find in a good number of cases that it is not due to the interest rate, although sometimes there is difficulty.

Senator Cook: That may tend to make the manager a bit more selective, but it is not the reason for turning down the loan.

Mr. Passy: No.

Senator Hays: I do not think that as a farmer, I have ever received—or at any rate it was very seldom—this preferred rate, and maybe the rate is not important. Maybe it is a question of the availability of money. I cannot see why banks should have to subsidize farmers, but that is actually what is happening. The banks are subsidizing these people and, having regard to what Senator Buckwold has said, it seems to me that we should look at the policy of the department. It is really the availability of the loan. If they guaranteed the loan, then I do not think we should ask the banks to subsidize. I think that when we guarantee a loan it must be a viable loan, and the farmer has to pay these rates. But if it has to be subsidized, why should the banks subsidize it?

Senator Cook: In other words the farmer should be viable.

Senator Hays: That is right.

Senator Molson: But we must keep in mind that they get a guarantee by the government.

Senator Hays: Yes, but take the case of somebody building a house, he also gets a guarantee, so what is the difference?

Senator Cook: The guarantee does not help if you are lending at a loss.

Senator Hays: We criticize the banks, but if the bank does not loan the money we cannot very well blame the manag-

er. He has only so much money and he is lending some at 8½ and he is lending more at 10½, and he could lend it all at the higher rate in times of short money. Yet this manager looks bad by being compassionate to a group of people in a certain given area. So I think we should look at policy.

Senator Desruisseaux: Mr. Chairman, two or three years ago, as I understand it, there was quite a campaign carried on by the banks for these loans directed towards the public, and I wonder what the results were. In other words, there was a publicity campaign inviting the public to avail themselves of this type of loan.

Mr. Passy: I was not aware of any such campaign.

Mr. Monk: I recall that one of the banks in Quebec made a special effort to make more of these loans.

Mr. Passy: It seems to me that a couple of years ago the banks did go to a two-rate structure in relation to small businesses, and there was quite a bit of publicity about this, but I do not think it was related to these programs.

Senator Cook: As a matter of interest, are there overlapping provincial programs along these lines?

Mr. Passy: Yes, particularly in the farm program area and most of the Atlantic Provinces have fisheries loan boards who are lending money for very similar purposes to those permitted under this act, but at 3 or 3½ per cent interest. So, clearly, they take the lion's share of the demand in those provinces. In relation to small businesses, most provinces have developed corporations of one kind or another that do provide financing, and in the case of the farm program I think I am correct in saying that Quebec is the only province that has a similar program, and therefore there is very little traffic under our farm program in Quebec.

Senator Cook: On the question of the availability of loans, it seems to me that either the project itself is not viable or the applicant is a pretty poor credit risk. Otherwise he would get money under either the federal scheme or from the provincial government.

Mr. Passy: I would suggest that that is generally true, but certainly the rate might well then come into play. If the purpose were eligible and the borrower's project completely viable, then it is possible that the rate would become an important determinant for the bank.

The Chairman: Are there any further questions?

Are you ready to report the bill?

Senator Smith: I move that we report the bill without amendment.

The Chairman: Without amendment?

Hon. Senators: Agreed.

The committee adjourned.



SECOND SESSION—TWENTY-NINTH PARLIAMENT

1974

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

Issue No. 5

TUESDAY, MAY 7, 1974

Complete Proceedings on Bill C-4, intituled:
“An Act to amend the Export and Import Permits Act”

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Beaubien	Laing
Blois	Laird
Buckwold	Lang
Connolly (<i>Ottawa West</i>)	Macnaughton
Cook	*Martin
Desruisseaux	McIlraith
*Flynn	Molson
Gélinas	Smith
Haig	Sullivan
Hayden	van Roggen
Hays	Walker—(20)

**Ex officio members*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 6, 1974:

“A Message was brought from the House of Commons by their Clerk with a Bill C-4, intituled: “An Act to amend the Export and Import Permits Act”, to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator McElman moved, seconded by the Honourable Senator Carter, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McElman moved, seconded by the Honourable Senator Carter, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Tuesday, May 7, 1974.

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 10:00 a.m. to consider the following:

Bill C-4 "An Act to amend the Export and Import Permits Act".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Buckwold, Cook, Desruisseaux, Martin and Smith. (8)

Present; not of the Committee: The Honourable Senators Benidickson, McElman and McIlraith. (3)

In attendance: E. R. Hopkins, Law Clerk and Parliamentary Counsel.

WITNESSES:

Department of Industry, Trade and Commerce:

Mr. J. J. McKennirey, Director General, Office of Special Import Policy;

Mr. H. D. Evans, Chief, Export and Import Permits Division.

After discussion and upon motion of the Honourable Senator Cook it was *Resolved* to report the said Bill without amendment.

At 11:25 a.m. the Committee adjourned until 9:30 a.m., Wednesday, May 8, 1974.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

Report of the Committee

Tuesday, May 7, 1974.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred Bill C-4, intituled: "An Act to amend the Export and Import Permits Act", has, in obedience to the order of reference of Monday, May 6, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Salter A. Hayden,
Chairman.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Tuesday, May 7, 1974.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-4, to amend the Export and Import Permits Act, met this day at 10 a.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Honourable senators, in considering Bill C-4 this morning we have with us two officials from the Department of Industry, Trade and Commerce: Mr. J. J. McKennirey, General Director, Office of Special Import Policy; and Mr. H. D. Evans, Chief, Export and Import Permits Division.

I understand that Mr. McKennirey will make an opening statement.

Mr. J. J. McKennirey, Director General, Office of Special Import Policy, Department of Industry, Trade and Commerce: Honourable senators, I believe you are familiar with the contents of the bill. Essentially, under the Export and Import Permits Act you can do three things: First, put items on what is called an Export Control List; second, put them on an Import Control List; and third, establish what is called an Area Control List.

The purpose of this bill is to add to the reasons for which items can be put on the export control list. There are two additional reasons. One is that if the government is trying to encourage the upgrading of resources in this country, and is making various kinds of efforts to do so, these efforts should not be rendered ineffective by reason of unrestricted exportation of the raw materials in question.

This is enabling legislation which is intended by the government merely to be a means of last resort in its efforts to encourage the upgrading of resources.

The second reason for proposing export controls is to cover the situation in which there is in this country a large supply of a kind of material for which the price is depressed so that it is not possible to achieve a reasonable return at that particular time. It is proposed that in such circumstances the government should have the power to introduce export controls to avoid further disrupting the market, in order to maintain the price at a more reasonable level.

The government does not visualize too many circumstances in which Canada would have sufficient impact on the international market to be able to make use of this particular means to improve the price of materials.

But, in any case, it is enabling legislation which the government would like to have in place.

The third proposed amendment to the bill is one to support action taken under the Farm Products Marketing Agencies Act with respect to supply management for eggs and turkeys. Under the Farm Products Marketing Agencies Act, supply management programs are permitted to stabilize supply conditions in order to avoid oscillations in price and make it possible for producers to have a more reasonable return. However, attempts by supply management to stabilize the price within the country can be upset if there is an availability of low-priced imports. Therefore, to support the supply management activity, it is proposed to enable the government to impose import controls. That is the object of that amendment.

The final object of the bill is to repeal section 27 of the act, which sets out an expiry date. The act has now become, essentially, ongoing legislation. It is used to support seven other acts which do not have an expiry date. Five of those acts have to do with maintaining prices in the agricultural and fisheries sector. The others are the Textile and Clothing Board Act and the Anti-dumping Act.

At times import controls are necessary in order to implement these acts. Therefore, this act is really aiding and abetting ongoing legislation.

In addition, Canada has a series of international commitments with respect to the exportation of strategic goods, which are also of an ongoing nature. These are controlling export of strategic goods to the countries named in the Area Control List, which are obligations to members of NATO. The government also has international obligations of an on-going nature in the field of commodity agreements, for example, cocoa. All of these obligations have no expiry dates. Essentially, that is the basic reason why the government feels that the business of having an expiry date serves no useful purpose, and is really inconsistent with all the legislation which is being complemented by this act.

The year that this act comes up for renewal causes a lot of administrative difficulty for industry, who have to re-apply for export permits. In many cases, export permits are given to, for example, 400 logging firms on the West Coast on an annual basis. Export permits of a six-month duration are provided to firms who supply aircraft parts around the world so they can supply these parts on an emergency basis in order that aircraft will

not be grounded too long. We have import permits of a certain duration of time to cover people who are importing shirts. In the year that this act is renewed all of this work has to be done at least twice.

Another problem with regard to this business of the act expiring regularly arises when industry enters into long-term contracts with state trading nations, for example, China. The state trading nation wants to be sure that an export permit will be granted for the product they are buying. The product has a long-lead time, that is, its delivery is two or three years down the road, and of course, the act is expiring in the meantime; so technically, it is impossible to assure them that an export permit will be granted for the object in question, and this has been the cause of quite a bit of negotiating back and forth. It is a sort of bureaucratic obstruction to trying to sell to these state trading countries, and it would be much easier if the act was not subject to an expiry date.

Mr. Chairman, that sums up the four amendments. If there are any questions, we will be prepared to deal with them.

Senator Beaubien: Mr. McKennirey, supposing the act expired, and the government had a contract with China to export certain things to them, you would not need an export licence then, would you, if the act had expired?

Mr. McKennirey: That is right. You would not.

Senator Beaubien: Well, how does the argument stand up, then, that you need to continue this act because you could not guarantee an export licence? You would not want one.

Mr. McKennirey: In the case of the countries we have had this difficulty with—China was one of them—the problem is that they know the act expires, and they want some sort of guarantee that there will be no further necessity for an export permit.

Senator Beaubien: Well, the best way to give them that guarantee is to let the act expire, is it not?

Mr. McKennirey: Well, the other point that is drawn to my attention by Mr. Evans here is that, in the matter of dealing with China, they are on the Area Control List, and we have a continuing commitment to the NATO countries that we will not sell strategic goods to Area Control List countries without agreeing to international supervision as to what we sell.

Senator Beaubien: Mr. McKennirey, I am just trying to get this straight in my mind. Let us talk about potash. In Saskatchewan there was a tremendous over-supply of potash, and the province started limiting production, and that sort of thing. Has the federal government any way of controlling potash now?

Mr. McKennirey: No.

Senator Beaubien: Therefore, if this were passed, the federal government could make any regulations it wanted to make without any further reference to Parliament with

regard to potash. It could put the price up, or keep it from being exported, or do anything it wanted.

Mr. McKennirey: What it could do, sir, is, it could make potash subject to export controls. It would have to do so, of course, by Order in Council, and the government would have to approve the Order in Council.

Senator Beaubien: I know about the Order in Council, but I am talking about Parliament. The government would not have to go back to Parliament. It could do anything it wanted.

Mr. McKennirey: It could make it subject to export control, and that export control would be subject to conditions set by the minister. That is right.

Senator Beaubien: It could set the price, and the quantity produced, and everything else.

Mr. Chairman, it seems to me that we are talking about discretionary powers, and in fact, everything can be controlled under this thing. It does not matter what line you are in, the government can control it. If you are going to export or import, the government can set the price, it can limit the amount, and so on, without any reference to Parliament. All they have to do is put through an Order in Council. I am not saying they are going to do something that is wrong, but I am saying that if you are importing or exporting you are completely at the mercy of the government.

Mr. McKennirey: Mr. Chairman, I think there is one point that is worth noting here, and that is the circumstances under which this amendment for surplus and depressed prices might be applicable.

Senator Beaubien: Depressed prices?

Mr. McKennirey: Yes, sir.

Senator Beaubien: There are not too many of those about nowadays.

Mr. McKennirey: That is right, but the wording of the amendment is, "in circumstances of surplus supply and depressed prices," for a particular material in the international market.

Quite candidly, we have been unable to pick, at this moment, even one item that we think this sort of thing could apply to. It could be that in the future one could come up. It was true that, in the case of potash, when prices were very low, the government felt that it was ineffectual, inasmuch as the Saskatchewan government took over the job of setting up some sort of export control mechanism. At the moment, however, there is no particular raw material that we can think of where these particular residual powers would be necessary, though again it could be that in the future one could come up. By virtue of the fact that you are talking about materials in conditions of surplus supply and depressed prices, where the amount of material that would be available for sale from Canadian sources would have an influence on world prices, those circumstances would be very rare.

In the case of agricultural products, they are already covered under the Wheat Board. The Wheat Board has

that particular power. So I think, in a sense, it tends to limit the generality of the application of the amendment.

Senator Beaubien: Who would decide if there is a surplus and depressed prices? And is there any appeal?

Mr. McKennirey: It is hard to say. It is a theoretical question, but all of the suppliers may find it to their benefit to be able to co-operate in order to limit the supply in a legal way so that the world supply would be reduced and improve the price they would get. It would be to the advantage of the producers in the country to—

Senator Beaubien: What about the Combines Act?

Mr. McKennirey: That is the point. This is one situation which alleviates the responsibility of the suppliers, if there is more than one supplier.

Senator Benidickson: Mr. Chairman, I have been making some inquiries about this bill, frantically, this morning. I find it got third reading in the House of Commons at about 3.15 yesterday. In the first instance, no members of the index staff or the library could even tell me anything about the third reading stage. Three-quarters of an hour after the start of normal office hours this morning, somebody did ascertain from the Journals branch of the other place that it did get third reading over there.

I did not hear Senator McElman's remarks in introducing the bill yesterday, but we waived our rules to go ahead immediately with second reading, which is not abnormal, but by getting up early this morning I did get an opportunity to read what would be the equivalent of our "blues."

We have just heard that they cannot think of a single product the necessity to control the export of which would demand any urgency in the passage of this bill. Therefore I cannot help but think that the urgency element must exist in clause 2. Clause 2 relates to control of importing. Now, when you start to control importing—

Senator Cook: Eggs.

Senator Benidickson: I want to find out what that urgency is.

Senator Beaubien: They are too cheap.

Senator Benidickson: When you start to control importing there must be some emergency there, and I would like to know what it is, because legislation at the moment covers an agricultural product that can be put on the Import Control List, if the product comes under the Agricultural Stabilization Act, relates to the Agricultural Co-operative Marketing Act, to the Agricultural Products Board Act or to the Canadian Dairy Commission Act. What is it that government does not have right now to do some controlling of imports? Usually, when we propose to control some imports that means some benefit to a Canadian producer of whatever the product is, but, on the other hand, it doubtless involves increased cost to the purchaser of that product in Canada. What are these products? What action is likely to be taken? Unless this is examined, we won't know anything about it because it authorizes executive action on the part of the cabinet

without too much notice to the country as a whole. Now you have, I think, mentioned turkeys and eggs. Is this going to give authority besides, if sufficient pressure is applied to control the import of, for example, cucumbers, tomatoes, strawberries, potatoes and all kinds of other things? Will that be the effect? Could it conceivably give that authority to the cabinet? That is in addition to and outside of the measures that may be available under our dumping laws or the authority vested in the Tariff Board or in the Minister of Finance by publicly announced changes in import duties in the budget. What are we in for here and why are we moving so fast? I might add, before you reply, that I think that since basically government intention is involved, this committee should have before it a member of the government because it is the Cabinet that will have the authority to act under this legislation.

The Chairman: Well, let us have a chance to answer your question first.

Mr. McKennirey: Under the Farm Products Marketing Agencies Act, which is referred to in this amendment, the only two products that can be subject to supply management are turkeys and eggs.

Senator Beaubien: That is at the present time?

Mr. McKennirey: Yes. And if there are other products to be added, the Farm Products Marketing Agencies Act would have to be amended.

Senator Benidickson: That is, the act itself must be amended, or would it be a case of issuing an Order in Council?

Mr. McKennirey: The Act itself would have to be amended. It is only permitted for poultry and eggs.

Senator Benidickson: So that answers my question. In no way could I conceive that the executive would have the right to do something that would raise prices for consumers in the field of tomatoes, cucumbers or what might be termed hot-house grown foods products in Canada.

Mr. McKennirey: No, sir. The second point I want to make is that under the Farm Products Marketing Agencies Act, with respect to poultry and eggs, supply management is permitted. As I explained, and in order to make supply management effective, some sort of control is necessary from time to time for imports. Otherwise the whole object of supply management would be defeated. That was the purpose of this particular amendment, to provide the necessary support for the turkey and eggs supply management programs.

Senator Benidickson: What was the date of the previous amendment?

Mr. McKennirey: The Farm Products Marketing Agencies Act was passed in 1972. Now under the Farm Products Marketing Agencies Act, if a supply management agency introduces supply management, it does not necessarily follow that import controls would be imposed for them. If the supply management agency feels that cir-

cumstances have arisen where import controls would be necessary for the sake of the program, they can then make representations to the government, and the government will then evaluate the situation in terms of its own guidelines and proceed with an Order in Council if that is deemed necessary. There is an urgent situation before the government right at the moment with respect to both turkeys and eggs. There is a large inventory of turkeys in the United States and they are selling at well below the supply management price in this country for turkeys. Also there is a large inventory of eggs with a large number of them coming into the country, and so the government is anxious to do something with regard to both turkeys and eggs right at the moment.

You asked also, senator, as to whether there would be another means to achieve the same end. Under the Agricultural Stabilization Act, which is already provided for in the Export and Import Permits Act, if the government put in a stabilization program, for example, for eggs and turkeys, such a program would involve either deficiency price payments or some kind of price support mechanism that would mean an outlay of government funds. Then the government could, under the Agricultural Stabilization Act, if it engaged in price support activity for those products, invoke the Export and Import Permits Act as written to support that particular stabilization activity.

Senator Benidickson: I think I understand that that stabilization act that you referred to involves government expenditures to support the prices of certain products.

Mr. McKennirey: Whereas the Farm Products Marketing Agencies Act does not.

Senator Benidickson: It involves no government subsidy or support?

Senator McElman: When Senator Beaubien listed the things that the government could or could not do under this act, the witness nodded assent, I believe. Included in that list Senator Beaubien said that the government could set prices under this act. But surely the government cannot set prices under this act, can it?

Mr. McKennirey: It cannot set prices, as I understand it, but—and here I am going back to an earlier question about surplus materials and depressed prices—the government could establish as one of the conditions for an export permit that the price would not be below a certain figure. For example, with respect to surplus supply and depressed prices the government could make it as one of its conditions for granting an export permit that the item being exported is not being exported below a certain price.

With respect to import controls which exist now on shirts under the Textile and Clothing Board Act, which is another act which is complemented through the agency of this act, the government sets import controls on shirts below a certain price per dozen, and they can only come in in a certain quantity.

Going back to the question of poultry and eggs, the government would not be imposing a complete embargo on poultry and eggs coming into the country if they were below a certain price. Normally it would, because of its obligations to its trading partners, allow the quantities in that came in during the years previous.

Senator McElman: Mr. Chairman, as I understand it, this act was passed initially to meet agreements that had been made after the last war between various western countries. Is it not true that all western industrial countries and Japan have today on their statute books similar types of legislation?

Mr. McKennirey: Yes, sir, they do.

Senator McElman: If we did not have this legislation, then we could not meet the contractual obligations which we have with many countries.

Mr. McKennirey: Yes, sir. One very important example is that of our relations with the United States. When that country supplies material to Canada their sellers do not require export permits. Normally in the United States exports must have permits in respect to other parts of the world, but these would create a great deal of red tape and bureaucracy in the trade between Canada and the United States. The Americans have, therefore, as a result of representations made by their exporters waived the necessity to produce export permits for all the goods that flow into Canada. Canada, in return, agrees with the United States that anything that enters from the United States and is shipped out of Canada without a change as to form, value or substance, will require an export permit. If it is incorporated into a different product, that is something different. This is done to ensure that Canada does not become a back door for exports out of the United States to somewhere the United States does not wish them to go, and which would normally be covered by its export legislation.

This is a very convenient arrangement for the Canadian cross-border trade and is implemented under the Export and Import Permits Act. Of course, if we did not have that act we would not be able to implement this. It is a very important contributing factor to cross-border trade and also to the supply to Canadian manufacturers, for example, of components and materials of one kind or another on a daily basis.

Senator Cook: You are referring to the act as it existed before this amending legislation.

Mr. McKennirey: Yes, sir.

Senator McIlraith: Reverting to clause 2, with reference to agricultural products, under the agricultural products price stabilization legislation the principle is that the producer obtains the full price warranted by the market, but the taxpayer takes up the difference.

Mr. McKennirey: Yes, sir.

Senator McIlraith: This amending legislation would cause the consumer to pay the difference in price. Take your example of eggs; it was indicated in the newspapers last week that the authority of this legislation

would be exercised in respect to eggs. That means that they will become more expensive in the chain stores to the consumer.

Mr. McKennirey: Not necessarily, sir.

Senator McIlraith: Well, just a minute; the imports are cheaper now than the Canadian produced eggs. If this legislation were exercised to exclude those eggs, would the consumer not have to buy Canadian produced eggs at the higher price?

The Chairman: I did not understand there was to be an exclusion, but a limitation on the amount which might enter.

Senator McIlraith: Allow me to use the word "restriction", then. There is approximately 10 cents per dozen differential to the consumer now. If we restrict the lower-priced product from being available in the chain stores, is it not reasonable to assume that the consumer would pay the higher price and that difference in cost would be transferred by the use of this mechanism directly to the consumer? The previous legislation which is still in force caused the differential in price to be spread among the taxpayers at large. Is that not in essence the result of this clause with respect to eggs and turkeys?

Mr. McKennirey: To take it in its theoretical context, the egg and turkey producers, as I understand it, came to the government over a period of years. In poor years they would ask for support. Then at other times there would be shortages and the price would vacillate up and down.

Senator McIlraith: Yes, I understand that.

Mr. McKennirey: The government advised the producers to put their own house in order and establish supply management in order to obviate a situation in which there would be over-abundance, followed by scarcity. At times the producers would be seeking assistance and at other times the consumer would be paying very high prices because of shortages. For these reasons the government advised the producers to establish supply management procedures. Supply management, of course, would be supervised by the government, and all the rest of it, so that it would not introduce monopolistic practices in order to extort. The representatives of the consumers decided that, on balance, the consumer would be better off with that kind of orderly production and marketing in Canada than with the swings back and forth which existed previously. This procedure was introduced with the feeling that the consumer would, in the long run, be better off, because the business would settle down and become efficient in supply and other aspects. There was no intention on the part of the government to insulate the Canadian markets from North American markets completely, or from long-term industrial or international price trends. Consequently it was felt that it was better for the consumer and the producer.

It is true that supply management eliminates the need for subsidies of various types under the Agricultural Stabilization Act. However, the business of supply management can only work if it is prevented from being upset from time to time by the availability of low-cost imports from the United States. There is a curious aspect to that which I might point out to the committee. Even if the amount of imports entering from the United States is very insignificant, and there is historical support for this; the price in the United States will pull the price down in Canada just by the threat that their product might enter. Often the cross-border trade has not been of great significance. But this fact has resulted from the comparison made between the prices in the two countries.

Senator McIlraith: I was not referring to the justification for the legislation, but to what it would enable government to do. The fact is that action taken under this legislation, if it does have an effect on prices, will raise them to the consumer. Is that not correct, bearing in mind your very last comment, that the consumer will have to pay the increased price directly?

The Chairman: Yes; those who eat the eggs or eat the turkeys.

Senator McIlraith: The consumer.

Mr. McKennirey: If I may, senator, there is a little better construction to be put on that. It does not raise the price; it stops the price from going below a certain floor.

Senator McIlraith: Exactly, so that the consumer is prevented from obtaining the benefit of the lower prices.

Mr. McKennirey: I should add one more caveat: The arrangement with our trading partners would be that the volume which entered the previous year, regardless of what it was, would be imported at the lower price.

Senator McIlraith: There is no such restriction in the legislation. It is not necessary to limit it to the volume that entered last year.

Mr. McKennirey: That is quite true, sir.

Senator McIlraith: So that it is reasonable to assume that any difference by way of maintaining the price upwards for the producer is paid directly on the product by the consumer. That is really what this legislation involves.

The Chairman: Let us use the happy phrasing: If any difference occurs, the incidence will fall on the consumer.

Senator McIlraith: You see, as I understand it, and if I can believe the newspapers so far as the price of eggs is concerned, this proposal would mean a difference of 10 cents a dozen to the consumer in the grocery store. There is also a larger question involved that is strictly germane to this amending bill, but which is not; perhaps, being argued this morning. That is, to what extent is it in the interests of Canada to raise the cost of food to our consumers while we are experiencing inflation and ever-increasing demands for higher wages? This question is of considerable interest in the light of the larger policy.

The Chairman: There are balancing factors, of course.

Senator McIlraith: Of course there are, but it still remains a nice question. If this legislation is to be effective and have any influence at all it will also raise the cost of food to consumers, and in a period of inflation the cost of food to consumers has relevance.

The Chairman: Let us say, in the short run.

Senator McIlraith: Sometimes it would affect pensioners, which is in the longer run.

The Chairman: No, the point is how long will the Canadian supply of eggs continue in the face of lower-cost imports? How long can the producers of eggs stand up under that?

Senator McIlraith: I do not know. We have imported butter from New Zealand, and we have experienced the meat and turkey situation for many years. I remember appearing before this committee many years ago when it was considering the very same kind of legislation. I had a very hard time, and I wish I had possessed Mr. McKennirey's eloquence on that occasion to obtain a limitation for as long as three years on the legislation. I quite agree that it should be of that duration at this point.

I would like to refer for a moment, if I may, however, to clause 1, which provides for the addition of paragraph (a.I) immediately after section 3(a) of the act. I would like clarification of a point which bothers me. As I understood your earlier evidence, Mr. McKennirey, you said you could not think of one item where you would have any reason to suspect there might be a need to use this clause at the present time. I think that was your evidence.

Mr. McKennirey: Yes, sir.

Senator McIlraith: If that is so, why is the government coming to Parliament to ask for the granting of this extraordinary power? I do not follow that governmental system.

Mr. McKennirey: I think the answer is to be found in the potash situation that arose a few years ago. The government felt somewhat at a disadvantage, because we had a situation where it was felt that if the export of potash could be restricted for a period of time, it might improve the world price of potash. The government had no legislation to restrict it. As a result, the Saskatchewan government jumped into the breach and did it. The question is now before the courts in Saskatchewan as to whether or not that action is illegal. In any event, the consensus was that we should really have this kind of enabling legislation in case that situation should arise again.

Senator McIlraith: Thank you very much.

Senator Cook: There are some fishery products which are sometimes exported in an unprocessed state, which could be benefited by being processed in Canada.

The Chairman: That is right.

Senator Benidickson: I am back to clause 2 of the bill and to the interest of the consumer, and how such consumer might be affected by the enactment of clause 2, and by such action as the executive might take.

Within recent days we were supplied with the 1973 annual report on operations under the Export and Imports Permits Act. There are two sections to the report, one dealing with export controls and the other with import controls.

A few moments ago somebody said something about the necessity of having import controls on an excessive importation of shirts, and the like, from certain low-wage countries, shall we say.

In this report it says that the Governor in Council can act in the interests of Canadian producers of this kind of textile product, but the Governor in Council, before acting, must have an inquiry made by the Textile and Clothing Board.

Again, with respect to other kinds of import controls, such action would only follow an inquiry under the Anti-dumping Act. There is no such protection for the consumer contemplated in this proposed amendment to the act. I am wondering whether or not something is already mandatory in the way of a prior inquiry before action is taken that might result in higher food costs to the consumer.

Are the witnesses able to say whether I am right or wrong in thinking that a couple of months ago the Food Prices Review Board, presided over by Mrs. Plumptre, did come to the conclusion that egg prices were then too high. Can the witnesses tell us anything about that report?

Mr. McKennirey: There are two questions involved. The first is with respect to supply management activities under the Farm Products Marketing Agencies Act. Supply management at the moment is only permitted in the case of turkeys and eggs. As I understand it, there are, under the Farm Products Marketing Agencies Act, a set of controls and checks on the operation of the supply management agencies to ensure that the consumers' interest is protected. Reference is made to the interest of consumers in the act. I do not pretend to know anything more about it than that, except that there is, as I understand it, an elaborate set of checks on what happens to the consumer.

Senator Benidickson: Something equivalent to the Textile and Clothing Board—prior inquiry, and so on?

Mr. McKennirey: Yes, for the consumer. With respect to the second question, the Food Prices Review Board report on egg prices alleged that the Ontario Egg Board may have tried to restrict or discourage imports. The Minister of Agriculture has directed the National Farm Products Marketing Council to investigate the Food Prices Review Board's report, and that investigation is still underway. We do not have a report on it.

Senator McIlraith: The expression "depressed prices" is used. Is there a definition of "depressed prices" in any of the relevant legislation?

Mr. McKennirey: No, sir. The assumption is that the term "depressed prices" applies where the price results in less than sufficient revenue to cover the cost of production. I think that is the test. That was visualized, but it has not been set out anywhere.

Senator McIlraith: Cannot the Governor in Council decide whether or not a price is depressed without any criteria? I am thinking of commodities like potash.

The Chairman: This is a condition under which this power may be exercised.

Senator McIlraith: On what basis are they "depressed"? Is it based on the earlier price of the same product?

The Chairman: I would not think so, necessarily. I would think that if there were a bankrupt or insolvency condition, that would indicate depressed prices.

Senator McIlraith: If new technology in another part of the world in processing a product—we are dealing with processed products—were to set the price down rather sharply, would that become a "depressed price" as envisaged in this legislation, because we had not applied that new technology?

The Chairman: The hens still have to lay the eggs.

Senator McIlraith: There are no hens in this one. I am referring to (a.2) of clause 1. It is extraordinarily loose and wide.

Mr. McKennirey: The circumstances that are visualized are those where the supply from Canada would have an influence on world prices. There would be no point in Canada's refusing to supply the market if world prices were going to be independently in any event and if other people could supply. It would only be a situation where the Canadian contribution to the international market was so large that by itself it could manipulate the price.

Senator Beaubien: That would be at the discretion of the minister. He decides everything.

Mr. McKennirey: The other point is that if the supplies of the product in question were to fetch only "depressed prices", then clearly it would not be in the interests of suppliers to sell at such prices. Therefore the effort of the government to help support the price in order that an economic return could be achieved would be in the interest of the suppliers of this country. Again, it would be buyers in other countries who would be paying the price. I would imagine such action would be at the instigation of the suppliers of this country asking the government to help them influence world prices in this respect.

Senator Desruisseaux: I wonder if I understood that correctly. Since this is a question of an order of the Governor in Council, have the parties, whoever they are, the right to appeal an order or to present their case before such an order is made? How is it done?

Mr. McKennirey: Strictly speaking, senator, the answer to your question is that there is no right of appeal under the act itself with respect to import and export permits.

However, this would be done through an Order in Council, which has to be gazetted and registered in Parliament, thus giving Parliament the opportunity to voice any objection it might have.

Senator Desruisseaux: Some exporters might be seriously hurt by a decision of the government not to allow the export of a certain commodity. A Canadian company involved in the producing or extracting of resources could be seriously hurt by such an order, and yet there is no right of appeal whatsoever, as I understand it, nor is there any opportunity afforded to put one's case before the government.

The Chairman: You are correct, Senator Desruisseaux, there is no right of appeal. However, as I understand the evidence, the suppliers are the people who would initiate action in so far as the government is concerned. It is the suppliers who would be protesting against the situation and the depression in prices by reason of the importation.

Senator Cook: Not all. The high cost producer might, but the low cost producer might be quite agreeable.

The Chairman: A low cost producer might be agreeable, yes, but I would expect that any consideration of the question would weigh all factors in determining the major interests.

Senator Cook: I could not agree more, Mr. Chairman. I simply say that it does not necessarily follow that all producers are going to request action on the part of the Governor in Council.

The Chairman: No, not all producers, but, perhaps, the more substantial producers may ask.

Senator McElman: Mr. Chairman, may I go back for a moment to the inclusion of the Farm Products Marketing Agencies Act. A very short time ago the egg producing industry in Canada was in a dreadful state. We had the so-called "egg war" between provinces. As a result all of the provincial governments, along with the federal government, decided as a matter of policy, that this legislation was an instrument to bring some order back into that industry, thereby enabling Canadians to produce with some assurance of a return on their investment. Without the inclusion of this, the whole of the policy decision by the federal government and all the provincial governments could, and perhaps would, be subverted. The very purpose is to support a policy agreed upon by all of the provincial governments and the federal government.

Is that not the case, Mr. McKennirey?

Mr. McKennirey: I am not familiar with the total development of the Farm Products Marketing Agencies Act, senator, but, generally speaking, that is my understanding of it.

Senator McElman: So that before any other agricultural product could be included under this legislation, there would have to be an amendment to the Farm Products Marketing Agencies Act?

Mr. McKennirey: Yes, the Farm Products Marketing Agencies Act would have to be amended.

Senator McElman: So that all we have, in effect, with this amending legislation, is the policy decision of the provincial governments and the federal government to bring some normalcy to the egg and poultry industry in Canada.

The Chairman: Well, the government could not go further without amending legislation.

Senator McElman: But the effect of this, Mr. Chairman, is simply to support the policy decision of the federal and provincial governments to bring some normalcy to egg and poultry production and marketing within Canada.

The Chairman: What I am saying, Senator McElman, is that the area of application cannot be enlarged without amending legislation.

Senator McElman: I appreciate that.

Senator Cook: That is in connection with eggs and poultry, Mr. Chairman. If the Government of Canada wants to encourage further processing of materials or production in Canada at the present time, it can only do so by holding out a tariff or by giving tax relief, and this and that. However, under clause 1, they could do it by decree. They could simply decree that one cannot export raw materials. That is a big jump, really.

The Chairman: Senator Beaubien.

Senator Beaubien: I do not have a specific question, Mr. Chairman, but I would like to say a few words.

The Chairman: Go ahead.

Senator Beaubien: Mr. Chairman, we are dealing here with temporary legislation which was to expire on July 31, 1974. The effect of clause 3 of this bill, which is to repeal section 27 of the act, will place this legislation permanently on the statute books. This amending bill will give the government tremendous discretionary powers. I think what the committee has to do is to look at the whole of the Export and Import Permits Act, section by section, because what this bill does is to put that act permanently on the statute books. It was temporary legislation to expire on July 31, 1974. Therefore, I think the committee should go into the Export and Import Permits Act very carefully. If we pass this bill, we will be putting that act on the statute books forever.

The Chairman: Well, we will be putting it on the statute books until Parliament decides otherwise.

Senator Beaubien: Yes, but still we are putting what was to be temporary legislation on to the statute books more or less permanently. We are not dealing simply with some amendments; what we are doing, in effect, is passing again, but in another form, the entire Export and Import Permits Act.

The Chairman: Looking at clause 1, which deals with efforts to retain further processing of natural resources in Canada, as I understand it, many of the provincial

governments are already doing that very thing. They are doing it in various shapes and forms, but they are doing it. This would put the overall authority in the Governor in Council to make a determination, in certain circumstances, that it is in the interests of Canada that a particular natural resource should be further processed within Canada.

Senator Beaubien: That may be a very good thing, Mr. Chairman, but this bill does not simply deal with two or three minor amendments to the Export and Import Permits Act.

Senator Cook: Clause 1 is not a minor amendment.

Senator Beaubien: No, it gives tremendous discretionary power to the Governor in Council.

Senator Benidickson: It creates beyond provincial laws a completely new federal authority.

The Chairman: Senator Beaubien, I think Mr. McKennirey may be able to deal with one of the points which you have developed.

Mr. McKennirey: The one point I want to mention, senator, is that we now have seven acts which do not have expiry dates and which are supported by the Export and Import Permits Act. Those acts, to some extent, would be emasculated by the failure of this act to be in force. Those acts include the Anti-dumping Act and the Textile and Clothing Board Act. So that, in effect, to drop this bill, or to allow the Export and Import Permits Act to expire, would be to incapacitate those other acts of Parliament supported by it and which are without an expiry date.

We have made some investigation as to whether or not there was any other legislation under which Canada could maintain its commitments to various countries for the exportation of strategic arms in the event that this act expired, senator, and the only other legislation we could use would be the War Measures Act. This would involve such things as cross-border trade with the United States and the commodity agreements we have mentioned.

Senator McIlraith: This came out of the War Measures Act when certain sections were cancelled. The first act was to be for one year's duration and was limited to strategic materials. The committee then had to decide whether the power to control, first, the export of strategic materials should be granted for one year. It was granted only on the condition that it was limited to one year, but later that was changed to three years, if I remember correctly. I, myself, had to carry some of those battles. It is on that point that we are asking for it permanently. I am not opposed to that.

Mr. McKennirey: Perhaps I might refer to a point mentioned by the chairman earlier. We have made inquiries into what sort of legislation exists in all western industrial countries and Japan. They have all now equipped themselves with enabling legislation, because under current conditions of international commerce there are certain circumstances and conditions that can be

dealt with by national governments only with this kind of apparatus.

The Chairman: Could I interject for a moment. It seems to me that under GATT some years ago, when we were dealing with anti-dumping legislation, we changed our whole approach to anti-dumping. Prior to that time, under anti-dumping all you had to prove was that the goods came in at a lower price than the price in the home market. In the anti-dumping legislation—which was an agreement in this respect, and a form of bill was presented to Parliament and passed—the whole approach to anti-dumping was changed. Now the fact that there is that difference in price does not necessarily mean that the dumping provisions of the law shall come into force. A man who thinks he is hurt has to go to the Anti-dumping Tribunal. At that time, although I did not say anything much about it, I wondered how long it would be before the governments of all the countries concerned sought some way of getting back into their hands some control of this situation, which they had given up in the revision of the anti-dumping legislation. This is only my own view, but this would appear to me to be a method for doing that, so that the parliaments or governments of particular countries will have this power, which is necessary if they are to afford adequate protection to their own industries and producers.

Senator Cook: I notice that under the bill the Governor in Council may establish Export Control Lists and Import Control Lists, and also make other orders in council. Is a report of what takes place made to Parliament.

Mr. McKennirey: Yes, sir.

Senator McIlraith: They have to be tabled.

Mr. McKennirey: All orders in council are tabled. There is an annual report as well.

Senator Smith: In what year was the Export and Import Permits Act made effective?

Mr. McKennirey: I think in 1947.

Senator Smith: I had an idea it was in the post-war period. It is not a contemporary act. When someone talks about going back and digging up the whole act and making it a permanent act, I would point out that it has been permanent for the last 25 years at least.

Senator McIlraith: I think the first one was in 1947.

Senator Smith: The need for such an act is evident from the number of years it has been operating.

The Chairman: It appears in the chapter of the statutes which I have, which has the Export and Import Permits Act, 1953-54. There must have been an earlier one.

Senator McIlraith: Some of them are earlier.

Mr. McKennirey: The act was revised as to title and, to some extent, as to substance since, I think, 1941 and 1942 when it was first enacted.

Senator McIlraith: There was an order in council under the War Measures Act.

The Chairman: This was the act passed in 1953-54. This is the act that is now in force.

Senator McIlraith: It seems to me that there were two separate acts and they were combined.

Mr. McKennirey: That is right.

The Chairman: Any other questions?

Senator Cook: I would be prepared to move, if we have finished, that we report the bill without amendment.

Senator Beaubien: Mr. Chairman, before that is done, let me say this. This bill is in effect passing the Export and Import Permits Act, which otherwise expires. We are passing the whole act itself, not a bill to amend. I think the least we can do is to take the Export and Import Permits Act and go over it section by section now. I do not say we should not pass this bill. However, I think it gives the minister a tremendous amount of discretion, which I think is completely wrong. At least we should look at the whole thing and see how these things fit into the amended bill. We are passing the whole act; otherwise it expires.

The Chairman: When you talk about discretion, let me point out that I have been a sort of a heretic in the field of ministerial discretion over the years, because I have held to the theory that it is wonderful that a minister with whom you may have to deal on some problem or other has discretion. If he has no discretion there is nothing he can do. Having discretion does not frighten me very much.

Senator Beaubien: Mr. Chairman, you have fought strongly against discretion in an awful lot of cases.

The Chairman: In particular cases, yes.

Senator Beaubien: I think we should look at the whole act. The government can put things on an export control list, an import control list, an area control list. I do not doubt they will do a reasonable job, or try to do a reasonable job, but the whole thing gives a tremendous discretion. That is why the act was to expire this July. But because it gives tremendous discretion Parliament felt they should look at it again. I think we should look at the whole act, not just two amendments to it. I have not read the act, but I think our committee should sit down and go over it section by section.

The Chairman: I have read the act, and I have not got as worked up about it as you have, Senator Beaubien.

Senator Beaubien: But we are now passing it; we are passing the whole act. The act expires, so if we do not take any action there is no act. We are re-enacting the whole thing, and I therefore think we should look at the whole thing.

The Chairman: What do you suggest? Do you suggest that we should go through the act section by section?

Senator Beaubien: Yes.

The Chairman: Right here and now?

Senator Beaubien: I think it would be better if we had all our committee here to go into it, but if you feel this is the time then I think it should be done.

The Chairman: If the committee wants to see what is in the act, right here and now is the time to do it.

Senator Cook: In a very general way.

The Chairman: Oh yes.

Senator Cook: It has been on the statute books since the 'forties, so looking in a very general way at what the sections are ought to be sufficient. Otherwise I agree with Senator Beaubien.

The Chairman: Would you care to take a run at it, Mr. McKennirey?

Senator McElman: Before Mr. McKennirey does that, let me ask this. Is it not a fact that what is here is not ministerial discretion, but Governor in Council discretion?

The Chairman: That is right.

Senator McElman: That is something quite different. How do you govern unless you have a law with which to govern and bring government policy into effect? This is no different from a hundred other pieces of legislation that give similar authority to government to put policy into effect and make policy effective.

The Chairman: Senator Beaubien was saying that I have sometimes taken a position in relation to discretion. There are several different ways in which authority has been given in legislation by Parliament. Sometimes it is ministerial, sometimes it is Governor in Council. My objection to some of the authority that has at times been given in particular bills to the Governor in Council has been on the basis that they have really been authorizing him to legislate rather than take an administrative decision under a statute.

Senator Cook: We have always been very opposed to the ministers' having discretion when he is a party to the dispute.

The Chairman: Yes.

Senator Cook: In other words, if it is a question of income tax and you are fighting the minister, then he has discretion to put you in the pokey. That is one we objected to.

The Chairman: I remember that one.

Senator McElman: Surely there is a difference in this act. It is not ministerial discretion. If government cannot govern on policy, then you just wipe out government and say, "Let Parliament govern the country."

The Chairman: Since this question has been raised, I think it would save a lot of time if we looked at the act. We may end up by having a look at the act anyway, so why not take the witness over it to get some idea of it? The act has existed for a long time and its provisions are

well known and there has been, I think, in general, capable administration under the act.

Senator Beaubien: Mr. Chairman, if this bill is passed with these amendments, it will give the government unbelievable powers with respect to export control and area control.

Senator McIlraith: Area control is limited by other criteria in the legislation, I believe.

Mr. McKennirey: Yes.

The Chairman: Instead of everybody making statements as to what can or cannot be done under the existing act, let us hear the witness. He can tell us in a summary way the scope and effect of the statute.

Mr. McKennirey: Mr. Chairman, I suggest that we take a look at each one of the three control mechanisms in the bill, the Export Control, the Import Control and the Area Control Lists, to see what the reasons are for using them and what is being proposed in the new bill.

With respect to the export control list, which is referred to in section 3 of the act, there are three reasons now whereby, by Order in Council, something can be put under export control. The first reason is to assure that arms, ammunition, and munitions of war will not be made available to any destination where their use might be detrimental to the security of Canada. That is the first reason why you can put something on the export control list.

Senator Buckwold: You say that the export of ammunition is limited if it is detrimental to the security of Canada. Would this then mean that we would have no way of limiting the export of arms to a country if such export did not affect the security of Canada, although it might affect the security of some other area of the world?

The Chairman: If it affected some other area of the world it might indirectly affect the security of Canada.

Senator Buckwold: Is it as broad as that? I wonder if the witness can answer that.

Mr. H. D. Evans, Chief, Export and Import Permits Division, Department of Industry, Trade and Commerce: If the act were to expire as at July 31 there would be no way now to control military equipment going to such countries as South Africa or Rhodesia or to the Middle East, for example.

Senator Buckwold: Do you then use such a broad interpretation as indicated by the chairman, namely, that the security of any limited area of the world would be construed as the security of Canada?

Mr. Evans: Basically, the answer to that is yes, sir. If you put it the other way around, you can say that it might not be in the best interests of Canada to let the arms go there.

Senator Buckwold: I thought the word was "security".

Mr. Evans: Security is involved there, yes.

Mr. McKennirey: Perhaps it would help if we discussed the actual mechanisms by which it works. All of the arms, ammunition and so on are listed on an export control list under an open-permit arrangement. Do you want me to explain that?

Senator Buckwold: No, I don't need that. It just occurred to me that a court could upset that.

The Chairman: I don't think so.

Senator Buckwold: You don't believe so, if there was a revolution in Taiwan or some place like that which had absolutely no relationship to the security of Canada, *per se*?

The Chairman: If we did ship we might be taking sides or we would be supporting both sides. Are you suggesting there would be no repercussion to Canada in that circumstance?

Senator Buckwold: I am saying that there might be occasions when we would have arms embargoes even when in the wildest stretch of imagination there would be no effect on the security of Canada. I am wondering if it is strong enough in the act as it is now.

Mr. Evans: Yes.

Senator Buckwold: Thank you.

Mr. McKennirey: The second purpose for which things can now be put on the Export Control List is to implement intergovernmental arrangements or commitments. The interpretation which the Department of Justice has put on this is that when we make arrangements with other countries with respect to the flow of commodities, in order to implement such arrangements we can put an item on an export control list.

The third reason which now exists in the act is to ensure that there is an adequate supply and distribution of such articles in Canada for defence or other needs. That is, anything that is in short supply and that we don't want to go out of the country, we can put under export control.

Senator Desruisseaux: Energy resources as well?

Mr. McKennirey: The control of exportation of products in the energy field is done under the National Energy Board Act. Short supply does cover things like beef last summer, and scrap iron and steel at the moment.

Those are the three reasons which now exist for export controls under the act. They would continue and there would be two more added under the bill as proposed.

The Chairman: But they would disappear if the bill were to die.

Mr. McKennirey: If the act expires they will disappear, yes.

Senator McElman: Is it true that "copper coin" has just been put on the list?

Mr. McKennirey: Yes. Otherwise it would become in short supply. The same is true of silver.

Senator Cook: Is it in short supply as a coin or as a metal?

Mr. McKennirey: As a coin.

Senator Benidickson: On page 3 of your report under the Act for 1973 it is stated that nine items were removed in their entirety from the export control list. What kinds of items were they?

Mr. Evans: They were items in the area of strategic equipment, senator. Periodically, we have a list review as technology becomes more advanced, because there is little point in restricting lower-grade technology items.

Senator Benidickson: All right. On page 4 you then go on to say that seven new items were added. Are they again items in this strategic equipment class?

Mr. Evans: Yes, sir.

Senator Benidickson: Thank you.

Mr. McKennirey: Now we move, Mr. Chairman, to the import control list. Under section 5 of the act there are currently five reasons for which things can be put on the import control list. One, again, has to do with intergovernmental arrangements with respect to things like commodity agreements or things in short supply. It could be coffee, cocoa and sugar. We only have cocoa on it now. The words in the act are:

(a) to ensure, in accordance with the needs of Canada, the best possible supply and distribution of an article that is scarce in world markets or is subject to governmental controls in the countries of origin or to allocation by intergovernmental arrangement;

And the next one is:

(b) to implement any action taken under the Agricultural Stabilization Act, the Fisheries Prices Support Act, the Agricultural Products Cooperative Marketing Act, the Agricultural Products Board Act or the Canadian Dairy Commission Act, to support the price of the article or that has the effect of supporting the price of the article;

That is what we have been talking about this morning. In order to make these acts effective, one of the things you have to do is control access at the border from time to time.

Finally, you have 5(c) "to implement an intergovernmental arrangement or commitment". Again that has to do with arrangements made between countries with respect to the international supply management of a particular commodity.

The fourth reason is that if, under the Anti-dumping Act, it is found that injury has been done and that one of the remedies should be import controls, you can put them on the Import Control List under this act.

Senator Benidickson: But Cabinet then can act only after an inquiry.

Mr. McKennirey: Only after an inquiry, yes, sir.

The Textile and Clothing Board Act is the final one. If the Textile and Clothing Board reports to the minister and makes a representation that import controls be imposed, and if the minister accepts it, then the minister can, through Order in Council, put it on an Import Control List. So that is what exists today and what is being proposed for the Farm Products Marketing Agencies Act, which joins those other agricultural and fisheries acts, but only from the standpoint of supply management.

Senator Benidickson: Referring again to the 1973 report, and so that we can see how you operate under this act, we do have references to a couple of items that we all, as laymen, have some knowledge of. It refers to the removing from the Import Control List of coffee and sugar. Could you tell us simply what was the reason for putting them on that list, and what was the reason for taking them off the list in 1973?

Mr. Evans: Originally coffee and sugar were put on there to implement the international coffee agreement and the international sugar agreement. Our commitment to those international agreements—

Senator Benidickson: Were they separate agreements?

Mr. Evans: Yes, they were two separate agreements.

Senator Benidickson: We are in the coffee agreement as buyers. Was it a conference that involved both buyers and producers of coffee?

Mr. Evans: As I understand it, yes, sir.

Senator Benidickson: Something like the Wheat Agreement?

Mr. Evans: Yes. Both of those agreements broke down in the last 12 months however. Consequently, there is no international agreement as to the requirements to have coffee or sugar on the Import Control List; therefore, by order in council, they were removed.

The Chairman: Would you go on with the next group?

Mr. McKennirey: Finally, there is the Area Control List. I think you can explain that better than I can, Mr. Evans.

Mr. Evans: There is a list of countries known as the Area Control List. I will read out the names of the countries and that will probably explain the reason for the list better. The countries are: Albania, Bulgaria, Czechoslovakia, East Germany and East Berlin, Hungary, Mongolia, North Korea, North Vietnam, The People's Republic of China, Poland, Romania, The Union of Soviet Socialist Republics, and Rhodesia.

Before I said the "and", you will have noticed that the countries that preceded that word are what we refer to nowadays as the Sino-bloc and, Soviet-bloc countries.

Senator Benidickson: You did not mention South Africa, did you?

Mr. Evans: No, I did not, sir.

The Chairman: Go ahead, please.

Mr. Evans: The reason for establishing these as a group of countries is to ensure that the government knows, generally speaking, what type of goods are going to these countries; and rather than saying that an individual permit is required for, say, knitting needles going to a factory in Poland, we have established what is known as a general export permit, which allows, generally speaking, non-strategic goods to go to these countries. Really, what we are looking for, and have to keep very close watch on, is to ensure that no strategic goods go to those countries without their having been properly examined, and to ensure that, basically, it does not upset the balance of power. This is where we come into our international agreement that will not encourage or permit the export of highly strategic goods to these countries.

Because of our commitment to the United Nations to uphold the embargo on trade with Rhodesia, we placed Rhodesia on the list, which means that permits are required, and generally speaking, unless there is something of a humanitarian nature involved, we are not issuing permits for goods going to Rhodesia. It is the same thing, conversely, but that will come up later.

Senator Cook: Do we get many applications to issue permits for exports to Rhodesia?

Mr. Evans: No, sir. I would say in the last year only about four or five. Generally, in fact, they have all been to a particular mission hospital and they have been related to such things as hospital equipment.

The Chairman: Those are the control areas, and that is the scope of the bill. You can see how important it is that the bill should continue to exist, and how denuded of power the government would be if, suddenly, this statute were allowed to expire.

We have a motion before the chair to report the bill without amendment. Are you ready for the question? Those in favour? Contrary? I declare the motion carried.

That is all our business for this morning.

Senator Benidickson: For the record I would like it to be known that while I have contributed by asking questions I am not a voting member of the committee.

The Chairman: We have the list here.

Senator Benidickson: Those reading the *proceedings*, however, may not appreciate the distinction.

The Chairman: Senator McElman is not a member of the committee either, so that puts you in good company.

The committee adjourned.



SECOND SESSION—TWENTY-NINTH PARLIAMENT

1974

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

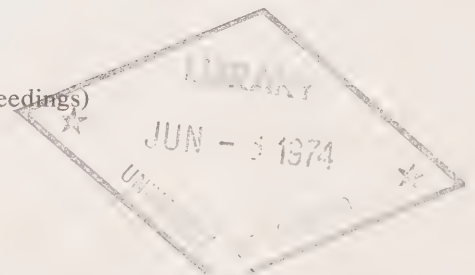
Issue No. 6

WEDNESDAY, MAY 8, 1974

Second Proceedings on

“The advance study of proposed legislation respecting the Combines Investigation Act,
competition in Canada or any matter relating thereto.”

(Witnesses: See Minutes of Proceedings)



THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators,

Beaubien	Laing
Blois	Laird
Buckwold	Lang
Connolly (<i>Ottawa West</i>)	Macnaughton
Cook	*Martin
Desruisseaux	McIlraith
*Flynn	Molson
Gélinas	Smith
Haig	Sullivan
Hayden	van Roggen
Hays	Walker—(20)

**Ex officio members*

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 2, 1974:

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Bourget, P.C.:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and report upon any bill relating to competition in Canada or to the *Combines Investigation Act*, in advance of the said bill coming before the Senate, or any matter relating thereto; and

That the Committee have power to engage the services of such counsel, staff and technical advisers as may be necessary for the purpose of the said examination.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.”

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, May 8, 1974.

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9:30 a.m. to consider the following:

"The advance study of proposed legislation respecting the Combines Investigation Act, competition in Canada or any matter relating thereto."

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Blois, Buckwold, Cook, Desruisseaux, Flynn, Laing, Lang, Macnaughton and Molson. (11)

In attendance: E. R. Hopkins, Law Clerk and Parliamentary Counsel; R. J. Cowling, Legal Counsel; C. A. Poissant and J. F. Lewis, Advisors.

WITNESSES:

Canadian Chamber of Commerce:

Mr. A. F. Joplin,
Vice President,
Operation and Maintenance,
C.P. Rail, Montreal.
Chairman, Corporate Affairs Committee;

Mr. Ronald F. Booth,
Secretary and Legal Counsel,
R.C.A. Ltd., Montreal.
Chief Spokesman;

Mr. W. G. Morris,
Partner,
Morris, Trevick and Associates,
Barristers and Solicitors,
Montreal.

Member, Corporate Affairs Committee;
Mr. R. W. Becket, Q.C.,
Vice President and General Counsel,
Canadian International Paper Company,
Montreal.

Member, Corporate Affairs Committee;

Mr. B. F. Roussin,
Chief, Patent Agent,
Canadian Industries Limited,
Montreal.

Co-Chairman of Committee on Intellectual and Industrial Property;

Mr. W. F. Corning, Manager,
Research Department,
Canadian Chamber of Commerce.

The Canadian Real Estate Association:

Mr. Brian R. B. Magee, President,
Chairman of the Board,
A. E. LePage Ltd.,
Toronto, Ontario;

Mr. Albert Fish,
Immediate Past President,
Chairman, Competition Policy Committee,
Vice President,
Bowes & Cocks Ltd.,
Guelph, Ontario;

Mr. B. S. Onyschuk, Legal Counsel,
Partner,
Thomson, Rogers,
Toronto, Ontario;

Mr. J. T. Blair Jackson,
Executive Vice President,
Canadian Real Estate Association,
Toronto, Ontario;

Mr. Georges H. Couillard,
Vice-President,
President,
Sogim Ltée,
Quebec City, Quebec.

The Committee proceeded to the consideration of the subject-matter and the examination of the witnesses.

At 11:50 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Wednesday, May 8, 1974.

The Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to further examine and consider any bill relating to the Combines Investigation Act in advance of the said bill coming before the Senate, or any matter relating thereto.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we continue this morning our study of the substance of Bill C-7. The first delegation appearing before us is that of the Canadian Chamber of Commerce. We will be hearing from the Canadian Real Estate Association later this morning.

Mr. A. F. Joplin, chairman of the Corporate Affairs Committee of the Chamber of Commerce, will make the opening statement.

Mr. A. F. Joplin, Chairman, Corporate Affairs Committee, Canadian Chamber of Commerce: Mr. Chairman and honourable senators, as the official delegation of the Canadian Chamber of Commerce, we very much appreciate the opportunity to appear before you today, to discuss the Chamber's submission on Bill C-7, an act to amend the Combines Investigation Act. I understand that you all have copies of our submission.

It is my pleasure now, sir, to introduce the members of our delegation, but before doing so I wish to apologize on behalf of Mr. Paul Ouimet, Q.C., the Second Vice-President of the Chamber, who would ordinarily have been here with you but is unfortunately unable to attend.

I am Fred Joplin, chairman of the Chamber's Corporate Affairs Committee, and my business affiliation is that of Vice-President, Operation and Maintenance, C.P. Rail, in Montreal.

Our chief spokesman today is Mr. Ronald F. Booth, a member of the Chamber's Corporate Affairs Committee, who is Secretary and Legal Counsel of R.C.A. Limited, in Montreal.

Working with Mr. Booth on the Corporate Affairs Committee is Mr. William G. Morris, who is a partner of Morris, Trevick and Associates, barristers and solicitors, Montreal.

Mr. Roussin, the Chief Patent Agent of Canadian Industries Limited, Montreal, is the co-chairman of the Committee on Intellectual and Industrial Property.

Mr. R. W. Becket, Q.C., is Vice-President and General Counsel of the Canadian International Paper Company.

We also have with us Mr. Bill Corning, the Manager of the Research Department of the Canadian Chamber of Commerce, to complete our delegation.

With your approval, honourable senators, I would now like Mr. Booth to lead off our discussion.

Mr. Ronald F. Booth, Member, Corporate Affairs Committee, Canadian Chamber of Commerce: Honourable senators, it is not my intention to go into the brief in any great detail. I understand copies have been made available to you ahead of time. So what I would like to do is simply touch on some of the highlights in the various areas of concern which the chamber has. Then, Mr. Chairman, I hope that that will leave some time for questions. There are members of our delegation who are prepared to deal in greater detail with any particular items which may attract your attention.

May I say at the outset, honourable senators, that the Chamber is in complete agreement with the inclusion for the first time in the bill of the service industries. We think it is a progressive step to provide for a civil jurisdiction in the act, but we feel that it would require more careful examination before it is proceeded with in the manner presented.

Concerning the Restrictive Trade Practices Commission itself, in our brief we have made a number of recommendations. First of all, we recommend that the commission be larger in numbers, and Bill C-29 would seem to indicate that the government agrees with this concept. They are proposing an increase to a full-time commission of seven, with provision for five temporary appointees. We recommend that the quorum be increased from the present number of two. The concept seems to be that the commission will have various disciplines available to it to deal with the complicated matters to be considered by the commission, and it is somewhat puzzling to us to understand how, if the quorum is only two, those various disciplines could be properly represented at any given hearing. We consider it essential that there be a right of appeal from the decisions of the commission, not only on questions of law but on the facts as well.

Finally, one of the most critical of our concerns, so far as the commission is concerned, is its very large discretion to deal with trade practices. It has, under section 31.2, the power to make orders, as you know, which could require businesses to take on new customers. The "refusal to deal" section has had a great deal of publicity. The commission can prohibit suppliers from engaging in what has been until now an accepted and established legal means of doing business. Here we are getting into the area of the commission's being able to prohibit what the bill defines as exclusive dealing, market restriction, tied selling and so on. There is no requirement in the bill which would compel the commission to consider legitimate business reasons for entering into relations of this kind. One only has to consider the franchise practice which is quite common in North America and elsewhere in the world, for that matter. If two people independently decide to enter into a contract in the form of a franchise agreement to sell fried chicken, and the franchisor or decides there should be certain standards of quality and product, and certain standards of quality in the surroundings, the cleanliness

of the premises and so on, and then the second party feels that he is tied to that franchisor to purchase supplies and so on, it is difficult to see why the commission should have jurisdiction and should be able to interfere with that relationship. There are all kinds of other fried chicken outlets available, and the public is not being harmed. Those people have entered into a contract, and the Chamber feels that the commission should not be able to interfere in that.

The "refusal to deal" provisions, in our view, are likely to interfere with the traditional methods of distributing products in Canada. The Prairies and the Maritimes, in particular, are areas where there have been established distributorship arrangements which have been in existence for many years between manufacturers and distributors. An essential part of these relationships is the ability of the distributor to provide services to products that need servicing. In my own industry, Consumer electronic products, such as television sets, it is essential that the distributor have a certain amount of product knowledge and be able to answer questions about the product. But the commission, without considering questions like this, and if they simply decide that someone is qualified financially to meet the usual trade terms, or on other rather vague grounds, can then interfere with this relationship and order that supplier to take on additional methods of distribution.

This is not going to hurt the supplier; it is going to hurt the distributors. I realize that this is a difficult question, but I think at the same time that there is an unwarranted assumption that there is some prejudice being created towards the consumer by the evil that that clause is supposed to alleviate.

The Chamber has no objection to the commission's being able to act in cases of abuse by business, or where there is some significant or material effect on competition. That is completely legitimate and nobody would argue with it. But we do not think that the commission should be set up in the form of an administrative tribunal to tinker with business methods that have been tried and tested and which have presumably been considered to be legal for a number of years. It is a bit of a motherhood statement, I suppose, but really what we are talking about here is the free enterprise system, and the question is whether that should be interfered with by government tribunals.

I think there are good reasons for regulated industries, obviously, in businesses such as railways—and Mr. Joplin may want to add a word on that—pipelines, banks and so on. But I am suggesting that in effect this commission will have the power to make all Canadian business akin to regulated industries to a certain extent.

Our basic suggestion in summarizing that point is that section 31.2 needs careful redrafting.

The question of interim injunctions is something we are in strong opposition to. Section 29.1 enables injunctions to be obtained in certain circumstances. Now, if you take the most ridiculous case that I can think of having regard to the language there as I read it, the court can issue an injunction prohibiting a person who is about to do or likely to do something which is an offence under Part V, the criminal part of the bill. The injunction prohibits him from doing something which he may not yet have done, and that injunction remains in force until he is prosecuted for the crime under section 30(2). It seems ludicrous because here you have an injunction telling somebody he

must not do something he has not been prosecuted for and may not even have done yet. I admit that that is an extreme interpretation, but nevertheless the language is in there. One might as well legislate that injunctions can be obtained to prohibit people from committing murder, which would seem to me to be a much more serious crime than some of those business offences referred to in the act.

Finally, and still in the area of injunctions, there is provision in the bill for *ex parte* injunctions at a time when the courts in most of the provinces are moving away from granting *ex parte* injunctions. Particularly in labour matters the courts are most reluctant to grant those injunctions, and here we have the government requesting legislation to enable the obtaining of those injunctions.

On the question of the inclusion of industrial and intellectual property, patents, trademarks, copyright and so on, our submission is that attention should be given to excluding, to a degree which Mr. Roussin can go into in detail, those areas of intellectual property. The are, by their very nature, monopolistic. They are government recognized limited monopolies, and again and again it seems to be at cross-purposes in putting into this act a provision for free competition.

Finally, on the question of bid rigging, in section 32.2, the Minister of Consumer and Corporate Affairs has proposed an amendment before the House of Commons Committee, but we still think that this does not go far enough.

The section as we all understand, or as I assume we understand, was intended to deal basically with the cases of contractors getting together and submitting bids to municipalities and others. However, it is a case of overreach, over-kill, because the language is sufficiently broad to prevent what are known as team agreements in high-technology industry. These are the areas with which I am most familiar and which in many instances, such as the aerospace industry and satellite communications, involve joining together to combine areas of expertise in which one company is more qualified than the other and submitting a joint bid. It is an essential part of that arrangement that they agree that only one party will be the prime contractor and lead bidder. They exchange information of a highly technical and confidential nature and it is essential that they enter the arrangement simply to gain a competitive advantage and then form a consortium, or team if you like, of their own. In my opinion that type of activity would be caught by the criminal offence of bid-rigging. Other examples come to mind, such as the submission of joint bids in the petroleum industry in order to spread the risk of exploration and development of our natural resources. Others are cases of small contractors joining together legitimately to submit bids on major construction projects in competition, perhaps, with large contractors who would be able to carry the project on their own.

In our opinion all these cases are caught by the legislation and the simple inclusion of the word "collusion" before the definition which the minister proposes I do not think satisfies the question. Business needs to know that it is free to go ahead with these types of activities assuming, of course, that they are not truly anti-competitive.

Basically those are the points which I wished to make, Mr. Chairman. I would prefer to leave time for questions, if there are any.

The Chairman: There are bound to be questions, Mr. Booth. With respect to your references to services, you

realize the very broad meaning to be attached under this legislation to "services". It includes professional services, such as commissions on selling real estate. The manner in which it is drawn is broadly without the exceptions that one might expect. For instance, in Ontario lawyers are governed or regulated by the Law Society of Upper Canada. Solicitor-and-client fees may at the instance of a client be taxed before a taxing officer, who is really a statutory official and whose decisions may be appealed. However, in reading this bill it would appear that if the lawyers were to settle on a tariff or scale of fees it might be one of the offences under Part V of the bill. In addition, in Toronto there is the County of York Law Association, which is now a statutory body. One of its functions, which is not particularly provided for in this statute, is to settle a tariff by investigation, research and study. It determines from time to time the scale of fees for acting for a purchaser or a vendor. That might under the wording of this bill be an offence, bearing in mind that "services" are included in the legislation. I understand that a different situation prevails in the province of Quebec, where your incorporated body governs the different professions. Superior to that, however, there exists a general statutory authority which rules on the question of fees. I am sure that if we examined the legislation in other provinces we would find additional differences.

Considering all these differences, does it not appear to you that the broad inclusion of "services" in this legislation without any exemptions would be more than confusing? It fails to appreciate the reality of life—that is, that there is much in the way of statutory background to all professions, yet they are included in the bill. May we take it, therefore, that the Chamber of Commerce would favour some very particular description of the "services" it is intended should be subject to the legislation and that there should be substantial exemptions?

Mr. Booth: Yes, I think that is a fair statement, Mr. Chairman. The Chamber really has not addressed itself to the question of making suggestions as to changes in language in any detail. That is the draftsman's job and we have confined ourselves mostly to consideration of concepts.

I recognize the problems that you mention in the area of services. In my opinion, they are very real and potential conflicts with the provinces. Perhaps a type of exemption for regulated services to provide for professions and other groups would be appropriate.

The Chairman: The language of the bill as drawn does not indicate that this would be a good defence.

Mr. Booth: No, I do not believe it would be, although it seems to me that Bill C-256 of 1971, the original competition legislation, contemplated exemption for provincially-regulated professions.

The Chairman: But we are discussing Bill C-7.

Mr. Booth: I understand. Yes, I agree, Mr. Chairman, that it is a real problem area. I feel rather reluctant, as a lawyer myself, to comment on exemptions for the legal profession.

The Chairman: But you know that if a lawyer in Ontario renders a bill to a client who is not happy about it, that client can insist on having it taxed?

Mr. Booth: Yes.

The Chairman: That is ample protection to the public, surely, since there is even a right of appeal from the taxing officer's decision. He does not follow any particular scale of fees in making some of his assessments; he may be guided more by expert evidence as to the quantity and quality of the service and what it is worth. So there seems to be a large area for real difficulty in the case of an over-active administration endeavouring to establish precedents.

Mr. Booth: Yes, I agree.

The Chairman: Are there any other questions with respect to this point that members of the committee would like to put?

I was concerned, Mr. Booth, about your almost "blessing" on the functions of the Restrictive Trade Practices Commission. If this so-called anti-inflationary bill ever becomes law, it would become the Trade Practices Commission. Although a change of name does not matter very much, what do you think of combining investigative services, administrative services and quasi-judicial functions in the same body?

Mr. Booth: In my opinion, it is an extremely dangerous practice. One becomes judge, jury, prosecutor and policeman, all in one. It certainly seems to be the trend of government today to create more and more of these administrative tribunals. While again we have not commented on that in any great detail, our thrust has been to discuss the wide subject, I suppose, more from the point of view of—I hate to say "giving up", but recognizing the reality of the ever-increasing number and powers of these boards. We would like to see this one limited specifically by the legislation to what are its powers and duties.

The Chairman: There is no right of appeal under the bill in respect of decisions on trade practices that may be made by the commission. I do not think section 28 of the Federal Court Act is broad enough.

Mr. Booth: I agree completely.

The Chairman: Do you agree there should be the right to appeal?

Mr. Booth: Absolutely—on matters of fact as well as on matters of law.

The Chairman: You realize, so far as this Trade Practices Commission is concerned, that someone from that commission will be chairing the inquiry that may be conducted and will make rulings on the admissibility of evidence. This is in the nature of an inquest, and anything goes. If you try to get a ruling on relevancy before that inquiry, it is impossible to get it. I can tell you that from experience. The answer is, "We have not yet heard all the evidence. Later evidence might establish relevancy, so we should not rule it out this early." Secondly, it is not a court, anyway; they are not, strictly speaking, bound by any rules of evidence, and there are legal decisions to that effect.

Mr. Booth: If I might add to that, Mr. Chairman, section 46.1 makes it a criminal offence to fail to comply to an order of the commission, which order may have been made on that kind of suspect evidence, and, in addition, creates a civil right to seek damages.

The Chairman: I think we have to look at both sides. If the commission makes an order, the person against whom

the order is made has the right to appear before the commission to present evidence and cross-examine witnesses.

So, broadly speaking, in that proceeding, the person affected has the right to present his side of the case, but he does not have any right of appeal. The action of the commission is not a criminal proceeding. It is only if you fail to obey the order that it becomes an offence.

We have not discussed the civil right to damages. You deal with that in your brief.

Mr. Joplin: Mr. Becket, I think, will be dealing with that.

Mr. R. W. Becket, Q.C., Member, Corporate Affairs Committee, Canadian Chamber of Commerce: We will be covering that, Mr. Chairman. Would you like me to speak now on that point? We are concerned with that.

The Chairman: Yes.

Mr. Becket: The Chamber is very concerned on the question of civil rights damages. It is concerned from two points of view. We think that the introduction of civil areas for the first time in the Combines Investigation Act is the right move, but we think it has been done in such a way that we are going to run into conflict. Fortunately, we do not have treble damages here, as they do across the border, but one of the dangers is this likelihood of damage. You have a civil action running right there, under the new provision.

I am not quite clear if I have your full question, Mr. Chairman. Perhaps I am not handling it correctly.

The Chairman: Your position, as I read it in your brief, is that you support the idea of creating civil right damages in an action that may be taken by a person who can establish that he has been hurt and suffered damage by the conduct of some person, which is against any of the provisions in Part V of the bill. Those are what I call the criminal law provisions.

You realize too that this is a civil action for damages, and therefore the proof is less than that required in a criminal trial.

Conceivably, a number of people may be tried and acquitted under the provisions of Part V, and yet they would be subject, if there is enough evidence to support it, to an action for damages for injury done to them by conduct contrary to Part V; and the element of proof to establish that conduct is less than the element of proof to establish violation of Part V.

Mr. Becket: That is true. We have not gone into this in depth. Certainly if you have a case where there has been a prosecution under the Criminal Code and there has been an acquittal or dismissal, the opportunity for success in a civil action would be fairly limited.

The Chairman: Why?

Mr. Becket: True, there may be slight differences of opinion in the amount of proof, but I would think those differences are minimal.

The Chairman: There is a big difference between proof beyond a reasonable doubt and the balance of probabilities.

Mr. Booth: Mr. Chairman, on page 4 of our brief we have made the submission that the right to sue for civil dam-

ages should arise only if there has been a conviction for an offence, which I think would address your point. It would only be after one had been found guilty beyond a reasonable doubt that a civil action could be brought.

The Chairman: So you support the principle of creating this civil right for damages, but you would limit its application to cases where a person has been convicted under Part V?

Mr. Becket: That is right.

Senator Flynn: That would not cover the case we discussed last week, namely, refusal to deal if, after a month or so, there were an order of the commission to do so. If he complies, there is no civil action, although there has been a delay of several months. It seems entirely unbalanced.

The Chairman: I have been talking about the criminal proceedings. The civil right arises also if you do not obey an order of the commission.

Senator Flynn: Yes. It is a criminal offence if you disobey an order of the commission.

The Chairman: To equate that, a civil right to damages, where it is disobeying an order of the commission, should be limited to a case where there has been a conviction.

Senator Flynn: Yes; but, on the other hand, I think it unfair in a case where there is a definite criminal offence which is the basis of a civil action. On the other hand, if a person obeys the order after several months of investigation by the commission, the damage may have been done and there would be no recourse.

The Chairman: Yes, I follow that. What do you suggest, then?

Senator Flynn: My view is that to restrict the civil action on the basis of a conviction would not be entirely fair in all cases.

The Chairman: How would you distinguish it?

Senator Flynn: I do not know. It seems to me that if there is evidence establishing the fact that one has acted in contravention of the general principles of the act, then a civil action could be based on that evidence. If one acted in contravention of the general principles of the act by refusing to deal, even though a subsequent order of the commission is complied with, then that should be the basis of a civil action. The act has to be fair and logical to everyone concerned.

The Chairman: If there is a hearing before the commission in relation to some trade practice over which the commission would have jurisdiction under this proposed legislation, and the commission makes an order to terminate that practice, are you suggesting that if the practice is stopped there should be no right of action?

Senator Flynn: No, Mr. Chairman. On the contrary, what I am saying is that if the evidence upon which the commission issues an order shows that someone suffered damages, then that individual should have some recourse. In other words, if an individual refuses to sell to so-and-so for three months and the commission then issues an order stating that the sale should be made, which order is complied with, the would-be purchaser could still have suffered damages as a result of the refusal to sell and there would be no basis for any recourse.

The Chairman: No, that is covered under section 31.1(1)(b), which reads as follows:

Any person who has suffered loss or damage as a result of . . .

(b) the failure of any person to comply with an order of the Commission or a court under this Act,—

So that the civil right of action would only arise if an order made by the commission has not been obeyed.

Senator Flynn: That is my point. I think there should be a recourse to cover the whole field.

The Chairman: If I understand you correctly, Senator Flynn, what you are saying is that the damages may have a cumulative effect.

Senator Flynn: Yes, the damages could have accumulated prior to the order being made.

The Chairman: What you are saying, then, is that any such effect should be part of the composition of the claim for damages.

Senator Flynn: Yes.

The Chairman: So you would broaden that aspect of it?

Senator Flynn: Well, I would have some reservations about inserting it in this legislation. It seems to me it may belong to another legislative body to provide for such recourse. For example, I am not sure whether or not the refusal to deal would constitute a fault under the Civil Code, notwithstanding the fact that there is no criminal conviction.

The Chairman: We had quite a lengthy discussion on this point with the Canadian Manufacturers' Association.

Senator Flynn: My purpose in bringing it up today, Mr. Chairman, is simply to refresh our memories on it.

The Chairman: The suggestion by the Canadian Manufacturers' Association was that there should be substantial amendments to some of the provisions in Part IV, which deals with the rights of the commission.

Senator Flynn: My only point, Mr. Chairman, is that if we accepted the view expressed by this brief, thereby restricting the recourse to cases where there have been criminal convictions, we would be creating unfair situations.

Mr. Booth: In support of our submission, Mr. Chairman, the law has not abandoned this field completely. There are rights of action presently existing under the Civil Code and under the common law. If the conduct engaged in by the parties gives rise to a cause of action, so be it. However, the intent of this clause, as we read it, is to insert an additional penalty or, to look at it another way, an additional inducement for people not to engage in such trade practices. In other words, what this says is that not only is one liable to a fine or imprisonment but, in addition, one is liable to new causes of action for damages. What we are saying is that those penalties should only arise if there is a criminal conviction.

Senator Flynn: Well, if that is done, it would certainly restrict the existing rights of action. I think that would be the effect, because it would establish that the only basis for a cause of action would be in circumstances where there has been a criminal conviction. All others would not be faults and, therefore, could not be the bases of any civil action.

Mr. Booth: But the other causes of action would lie under the Civil Code or the common law, not under the federal legislation.

Senator Flynn: But you would have to establish that the practice is forbidden by an act of Parliament. Refusal to deal would be forbidden under this legislation, but according to your submission there would be no recourse if an order of the commission to deal is obeyed. In effect, that would sanction the initial refusal.

The Chairman: I am not sure that I would say "Amen" to your legal pronouncement on that point, senator. What you are suggesting is that whatever might be the length of time—

Senator Flynn: In my example, Mr. Chairman, it would be easy to establish damages. I would simply have to establish that there was a refusal to sell followed by an order of the commission. That would be easy. I could then establish my damages for the period during which I was unable to purchase. There may or may not be damages as a result of the refusal to sell.

Senator Buckwold: Mr. Chairman, I wonder if we could get into a different area.

The Chairman: Yes.

Senator Buckwold: We have heard for the first time the problem of double ticketing raised with this committee insofar as section 36.2 is concerned. I think a difficulty in that respect has been pointed out which requires a good deal of explanation. Perhaps one of the witnesses might elaborate somewhat on just what is meant by "double ticketing".

Mr. Booth: I think the fear expressed in our submission in that respect, senator, is that the section might be interpreted as preventing the re-evaluation of inventory. In a sense, I think we all recognize that it is an emotional issue. If you go into a store and see two prices, you naturally cannot understand why you should not pay the lower price. What this section says is that it is only if it is public knowledge. So that what it does not prohibit—and I am not, by any means, suggesting that it should—is the situation where perhaps the stock in the back room is at one price and the stock out on the shelves is at a higher price. It seems to us that if the public does not know that there are two prices in existence, then it is okay.

Senator Buckwold: I gather, then, that you interpret this as being in relation to goods sold at the retail level only, as against other levels.

Mr. Booth: No. That is our concern; that is precisely the point. We are concerned that it goes beyond the retail level, and that it would back up into catalogue sales; it would perhaps back up into price lists that manufacturers have sent out and have not been able to change; it does not recognize the fact that inventories not only go up but may go down in value, they may become obsolete.

Senator Buckwold: This is my concern, that the marketplace is far broader than just having some goods ticketed on a shelf. It goes right down the line. You could have goods on a manufacturer's shelf that also have some markings on them indicating a price—a tag, a slip, or any number of things.

Mr. Booth: That is exactly our concern.

Senator Buckwold: In the wholesale field you have merchandise, or even in a retail store or a warehouse. What is a price tag? Is it a price in a list or is it the price on a tin of beans? I congratulate the Chamber on drawing this to our attention. The marketplace does not operate quite that way. It would be almost impossible to sell every product at its original price in a fluctuating market. How do you know when goods came in and when they went out? It seems to me that as a committee we should have some observations to make in this regard.

The Chairman: You appear to be addressing yourself to retail sales.

Senator Buckwold: I don't know. It would appear this would mean goods on a shelf at the retail level, but it is not exactly clear. It could be goods anywhere. It could be a stockpile of ore in a mine. It could be anywhere. Does this mean that the original price is frozen?

Mr. Joplin: It is our conclusion that under the present wording of the bill there is no place where it stops. This point is well taken. Is it on a retail shelf? Is it in a store? Is it still back in the warehouse? Is it on the manufacturer's workbench? Or does it go even beyond that to the primary manufacturer? Where does the legislation really stop as to what is double-ticketing? The definition is not very clear. We recognize that if a person picks something off the shelf there is an implicit contract between the price on there and when he takes it to the counter. That is one kind of situation, but what about inventory?

Senator Buckwold: All that would happen is that there would be no such thing as double-ticketing any more. The tickets would be such that they could be removed. That is happening now. A shirt could be marked at \$4.95; the same line goes up to \$5.95; they take the ticket off and they put on a new ticket. They used to stroke it out but they are getting smarter now. Is that double-ticketing, or is double-ticketing only if you somehow stroke out one price and add another one? I think we need clarification on this point.

The Chairman: The common form of double-ticketing as reported in the newspapers from time to time in connection with certain supermarket operations is that you find two tickets with different prices on the same product.

Senator Buckwold: If that is what they mean I am all in favour of this.

The Chairman: If we are limited to that.

Senator Buckwold: Yes. I say it is so vaguely worded that it could be interpreted to mean any change in price upwards of any item for sale at any level of its distribution process in which the price has changed on the product generally, but not necessarily on that particular shipment. This is what worries me.

The Chairman: That is something we will have to look at.

Mr. Joplin: Consider the case of a sale. Goods are ordinarily on display at \$10, but for some reason on the sale day the merchant puts the goods down to \$9. When the sale is over he wants to restore his price to \$10. That could be a case of double-ticketing right back to inventory.

Senator Buckwold: That in itself does not really worry me. I am really worried about the whole process of raising a price on a product. Does it always have to be the exact

price that the product cost the individual in that particular shipment? I do not know.

The Chairman: Common sense seems to suggest that it could not justify that interpretation.

Senator Buckwold: It could be interpreted that way.

The Chairman: The section may be badly drawn.

Mr. Booth: I think that is the problem. If you look at the broad definition of supply, under section 36.2(1)(d) it is an offence where there is a price

contained in or on anything that is sold, sent, delivered, transmitted or made available on behalf of the supplier to members of the public.

The public again is broadly defined. If a company in the mining business has a price list out and because its costs are obviously increasing it decides it has to increase its prices, if the public in the form of its customers is already in possession of their old price list, how does it raise its prices?

Senator Buckwold: I think we have to clarify this. Does this prohibit an inventory profit?

The Chairman: I should point out that paragraph (d), to which Mr. Booth referred, is one in respect of which the minister has proposed an amendment, and has recommended that it be deleted.

Mr. Booth: All I can say is that the chamber made a submission to the minister. I am happy about it. I do not know whether that is as a result of our submission.

The Chairman: I will not say this happened merely because you are here today. It may well have happened because of the representations you made.

Mr. Becket: The minister was at pains to point out in discussion that double-ticketing is not prohibited. You just must sell at the lower price of two tickets. The first three lines of the section say:

No person shall supply a product at a price that exceeds the lowest of two . . . clearly expressed.

This does not clarify the problem we were concerned with, that you get misinterpretation because it is badly drafted. It is improved by the deletion, but it is important to note that it is not a prohibition of double-ticketing.

The Chairman: What is the next point?

Mr. Joplin: There are some points we would like to talk about in connection with intellectual property.

Mr. B. F. Roussin, Co-Chairman of Committee on Intellectual and Industrial Property, Canadian Chamber of Commerce: We feel that where there is a reference to industrial property the wording is such as to embrace the normal exercise of rights derived under industrial property.

According to section 38(1) no person who has the exclusive rights and privileges conferred by a patent shall, directly or indirectly, by agreement attempt to influence upward the price at which any other person engaged in business supplies a product within Canada.

If you take the case of a patentee who is not engaged in the production and sale of a product covered by the patent, but who licenses the patent to another party, he obviously will want a royalty as a consideration for the right he is granting to the other party. Automatically, this

will enhance the selling price upward because the licensee in selling the product will have to keep in consideration the 2 or 3 per cent of his selling price that he has to remit back to the patentee.

This is probably not the intent of section 38(1), but a strict interpretation of the wording would cover such a situation.

Another example is in section 29(1), where we find the use of the words "commit or facilitate the commission of". Well, this is a very broad wording, "facilitate the commission of". It is left to individuals to interpret this and some people may well regard again the normal exercise of patent rights or trademark rights as facilitating the commission of an offence.

Another danger in section 29(1) is that it extends the possibility for contravention of the section. To give you another example, let us say that a company has been prohibited by an order of the commission from continuing its exclusive dealing in a trademark product, but that it continues to so deal. In such a situation it would be held liable, obviously, for an offence under section 46(1), but because the product happens to have a trademark it could be held that the company has used the trademark to facilitate the commission of an offence under section 46(1). So that would be a double offence.

That is one of the reasons why in our submission we recommend the deletion of the words "facilitate the commission of" in section 29(1). But our general submission is that there ought to be a provision in the act to the effect that the normal or proper or due—and you can use whatever adjective you see fit—the normal exercise of rights derived under "industrial property" or of "privileges conferred", shall not be regarded as contravening the provisions of the act, and this could well fit into section 4 which is the section exempting various acts done by people.

This is basically what our submission is all about.

Senator Laing: Mr. Chairman, I would like to know what has happened to us in Canada that it is deemed that this sort of legislation is necessary either to protect a distributor or, in the long run, to protect the consumer. I was in business for 27 years before coming into this profession. It was a different age. We were taught that the objective of industry was to produce goods of higher and higher quality and greater and greater volume at lower and lower prices. That does not seem to be the objective of industry today.

I cannot understand what has happened to the competitive system in Canada that it would require or would engender a demand for this kind of legislation.

When I was a member of the Canadian Manufacturers' Association we met occasionally and talked to one another. We found that the idea that a company had of the lowest possible price was a price for everyone. I don't think we did too badly by the consumer in those days, and I can give you an example. Up to 1952 we sold a particular product at \$38 a ton which today is selling for \$145 a ton.

What worries me is what has happened in the meantime in industry to engender this kind of demand among the public or among some people to require that industry, at every move, must have someone looking over its shoulder.

I had thought that no one in business would like this kind of legislation, but about ten days ago I happened to be speaking to a businessman from Western Canada about

this very legislation, suggesting to him that it should be unnecessary in Canada. His reply surprised me. This competent and prosperous businessman told me, "Don't you believe it. It is very necessary."

What kind of practice has been going on which would make a businessman tell me that? It must be something that was not going on prior to 1951, when I had some knowledge of business and competition in Canada.

I believe that consumer prices are going to suffer out of this kind of legislation, because for any product sold the mark-up is based upon the volume. If a manufacturer gives his product to four people to distribute instead of just to one in a community which could be served by one distributor, then in the end the consumer is going to pay more money.

Again, I ask: What has happened to industry in the time since I left business until now, to require this kind of constant snooping over the shoulder to see that justice is done to everyone? I don't think justice can be done to everyone in this sense of business. I don't think it is possible.

I worry when a competent businessman tells me that this legislation is necessary. I think of the great businesses on this continent and the fact that the Canadian experience has followed the experience of the U.S., where great individuals with great dreams created great articles. I think of Ford, Firestone and people like them. We have seen that same kind of pioneering influence Canada. Unfortunately, it seems to be heavily qualified today.

The Chairman: Senator Laing, on the opening day of our hearings I made use of the expression that it appeared from the bill, and from the speeches which the minister had made before the bill was tabled, that the government was attempting to stake out as a special preserve the marketplace where it would exercise all the control—presumably on behalf of consumers.

I understand and appreciate what you are saying when you ask what has happened, and what are the materials that the government has that indicate that this is necessary. Is it, for example, because a supermarket did some double ticketing in a few instances? You could not support legislation of this kind on the basis of that. You would simply deal with that problem in itself.

Senator Laing: Yes, those are only details.

The Chairman: Yes.

Senator Laing: They are merely details in the greater concept of getting to the consumer an article of as high quality as possible at as reasonable a price as possible.

The Chairman: If a person manufactures a television set and has a brand name on it and then sets a price on it, what is wrong with his dealing only on that basis?

Senator Laing: There is nothing wrong with that. Other people can make television sets as well.

The Chairman: That is right, and other people can have other brand names. But if I manufacture a particular brand of television set and someone comes to me and wants me to sell to him, and, looking him over, I decide that he is not the proper kind of person for me to get the kind of distribution that I want, what is wrong with that?

Senator Laing: What I put to these gentlemen in business is this: Why is it that this competent businessman in West-

ern Canada tells me this is a good bill? Whether he has a special grievance or not, I do not know, or whether he is a special case, I do not know; but what is going on in business today that would make him tell me that? That worries me. He is the only one who has told me, incidentally.

Mr. Joplin: Could I just check you on a couple of points, senator? I disagree with you that business in this country has lost its nerve or its direction or its dedication to the customer. That is not so. In fact, the Chamber represents what we consider to be ethical businessmen, and our position is that we do not subscribe in any way to any of the unethical conduct that is carried on. There have been some sharp practices, and I think everyone recognizes that there have been people who have indulged in such practices. I guess, in part, there is a kind of Gresham's law in sharp practice, just as there is with regard to money. Gresham's law says that counterfeit money drives out good money. We are very concerned with that aspect, senator. One thing that we do try to preserve is the good name of business, and we can preserve it if we eliminate the unethical practices. We think that is the proper thing to do.

We agree with you entirely that dabbling in business, becoming involved in it, ignoring the marketplace, trying to construct some falsity in the marketplace, is wrong. We do not agree with that principle in any legislation. We think dabbling in the marketplace is wrong. We think the marketplace should really look after itself. Where the marketplace will not look after itself, as I say, and where there have been sharp practices, and where people need protection, we agree that maybe there is something to that, and this is probably what your businessman is saying, namely, that there have been bad practices in the marketplace; but you do not have to have an envelope so big that everything you do is subject to a gang of guys going around poking their noses into your business. We do not think that is the right kind of bill to have at all, and we have tried to express here to you our feelings that you do not need to create such a big, wide envelope, such a big, wide bucket, that almost everything you do can have the effect of somebody nosing into it.

The Chairman: Did you have something more to add, Senator Laing?

Senator Laing: No.

Senator Lang: While we are on this theme, I wonder if I might refer to the Economic Council of Canada Report of July, 1969, which is the philosophical base for this legislation. In one sub-chapter there, entitled, "The New Industrial State," there is a summation of Galbraith's arguments in his book by that name, and I would like to quote some of it and ask for your comments as to its validity:

He finds that the giant corporation has achieved such dominance of American industry that it can control its environment and immunize itself from the discipline of all exogenous control mechanisms—especially the competitive market. Through separation of ownership from management, it has emancipated itself from the control of stockholders. By reinvestment of profits (internal financing), it has eliminated the influence of the financier and the capital market. By brainwashing its clientele, it has insulated itself from consumer sovereignty. By possession of market power, it has come to dominate both suppliers and customers. By judicious identification with and manipulation of the state,

it has achieved autonomy. Whatever it cannot do for itself to assure survival and growth, a compliant government does on its behalf—assuring the maintenance of full employment, eliminating the risk of and subsidizing the investment in research and development, and assuring the supply of scientific and technical skills required by the modern technostucture. In return for this privileged autonomy, the industrial giant performs society's planning function. And this, according to Galbraith, is not only inevitable (because technological imperatives dictate it); it is also good.

Mr. Joplin: I suppose that if you had read that when it was written, you might even think that what General Motors said was good for the world was what General Motors produced. Yet, if you were to look now at what has happened in the marketplace as far as General Motors is concerned you would find that certainly they are still doing very well—I am not going to apologize for General Motors—but certainly the changes in the buying habits of the public as far as General Motors' particularly large type of automobile is concerned, and certainly the pronouncements that have been made by the automobile manufacturers who live in the kind of world suggested by Mr. Galbraith, indicate that Mr. Galbraith would not be right when he wrote that.

I think one has to recognize that the marketplace does function differently in Canada, and that Canada is a different place from the United States—a much different place. We do not need to go to the United States and borrow their legislation. Our ways of doing business are very different from theirs.

The Chairman: Well, what is wrong with one of the references there? What is wrong with business influencing, or attempting to lead the potential purchaser in the direction of its products?

Mr. Joplin: Nothing.

The Chairman: Is that not part of selling?

Mr. Joplin: Yes, sir.

The Chairman: If they do it illegally, we do have a Criminal Code.

Mr. Joplin: Yes, sir.

The Chairman: And the question here is, as Senator Laing put it: Why do we need all these so-called safeguards? Do you think business practices in Canada, from your experience, and selling practices, are such that the consumer will continue to be hurt by operations in the marketplace unless all these provisions in this bill become law?

Mr. Joplin: I do not think the consumer is being hurt in the marketplace to any large extent right now.

The Chairman: He is not?

Mr. Joplin: He is not, no. I think he is getting his money's worth. The are, as I said, cases that can be pointed to as horrible examples, and the government seems to be bent upon providing this kind of protection. What we are saying is that if they are going to provide this type of protection—and we accept it as a foregone conclusion, they have gone this far with it, and have created a department whose job is fundamentally directed that way—if they have gone this far with it, they probably intend to go

further. If they go further, we want at least to try to preserve as much of the freedom of the marketplace as possibly, which has protected the customer and brought us to our present state of affluence in the world. We want to protect as much of that as we possibly can.

Mr. Booth: I wonder if I might add one example? I was interested to note the phrase, "a compliant government" in that quotation. I do not think that we in Canada can afford the luxury of legislation of this type. I know of an instance of a company in the United States that was served with a subpoena in an anti-trust matter. It did not involve this company; the company was called for purely evidential purposes and, in effect, the company was a witness. That subpoena required 7,200 man-hours of research to respond to it. Those man-hours were man-hours of professionals—lawyers, accountants, and so on—and there is absolutely no way that the costs of that sort of thing do not become a cost of doing business; there is no way that it does not get added on to the selling price of a product. For us to invite legislation that requires that sort of thing, I think, is ridiculous.

Senator Macnaughton: I wonder if I could ask Mr. Roussin, through you, Mr. Chairman, if he would apply the same arguments to intellectual and industrial property. There has been a tremendous growth and development of government regulation in that field.

Mr. Roussin: In the United States?

Senator Macnaughton: No, in Canada. I am concerned now with licensing and with people coming in and using patents and things like that. In other words, this forced licensing. For example, you have a patent on a certain item which has taken 20 years to develop, and now you have put it on the market, you are doing reasonably well and you are trying to get some of the costs of production back. And then, bingo, somebody wants to use it and pays you, perhaps, 1 per cent.

Mr. Roussin: This is automatic licensing, as recommended by the Economic Council.

Senator Macnaughton: Doesn't it imply the same trend?

The Chairman: Isn't the situation something like this? Under the Patent Act, for instance, you have certain exclusive rights. If this happens to relate to a product, then as long as you supply the market demand you have the right to deal in that yourself. When this bill becomes law, if it does become law, if I, as the holder and developer of a patent, supplying the market adequately, refuse to deal with somebody else who wants to get into this area, then there is a conflict in legislation. This can mean embarrassment and it may even mean litigation, and yet both pieces of legislation are federal legislation. In my view, this is an area that requires some very careful thought—the extent to which you are going to legislate additionally in relation to brand-name products, for instance. If some person demands a licence, and I refuse it, then I may have litigation, but at the same time under this bill I may have the commission making an order, and if I do not comply with that order I may be prosecuted.

Senator Macnaughton: That is my point.

Mr. Roussin: This is the very reason for our submission.

Senator Molson: Mr. Chairman, we have just dealt with some of the philosophy of this legislation, and it seems to

me that the Chamber of Commerce can quite rightly be designated as having the largest constituency of anybody to appear before us here, in that it represents the boards and chambers of all sorts of municipalities across the country.

I assume they have looked at all aspects, or have had representations made or have had discussions on all aspects of this bill. But, so far, nobody has mentioned one aspect which in a small way may affect the feelings of a great number of people in the community, and that is the area of sports. I do not know if anybody is going to come here and discuss anything to do with this, but it seems to me that with a body like the Chamber of Commerce, representing so many communities, they ought to have a view, even if it is only on, let us say, amateur sport which now is going to be subject to government control, in common with many of these other interferences with free enterprise. I wonder if the Chamber of Commerce has a view on the necessity for the government to step into that field in the way provided for in the bill.

Senator Macnaughton: One could almost say schizophrenic control.

The Chairman: But there does seem to be some conflict in language as between talking about amateur sports and talking about the rights of a player to move where his best advantage lies, and I would assume that the words "best advantage" would mean the best deal he can make. There seems to me to be a contradiction in terms.

Senator Molson: Has the Chamber of Commerce any view on this?

Mr. Joplin: In our discussions we took it generally from the point of view that we were talking about professional sports and we did not consider the question of amateur sports. We considered that professional sport was, in fact, a service, and we looked at it from the point of view that here was a man rendering a service in a professional way, and in a similar way to other professional men, and so we simply left it on that basis. We did not go beyond that or consider it in relation to the effect it might have on the community.

Senator Molson: There are comparatively few professional athletes but there are hundreds of thousands of amateur athletes, and the smaller communities would have the greatest difficulty in making their views known, and they are the ones most affected by amateur athletics. So I thought that perhaps the Chamber would have a view on that particular phase.

I take it they have not, Mr. Chairman. There is a deathly silence.

Mr. Joplin: As I said, Mr. Chairman, we had not discussed amateur sports.

The Chairman: Well, have you any personal view you would like to express, or are you speaking today only on behalf of the Chamber of Commerce?

Mr. Joplin: I think I will confine myself to trying to reflect the ideas of our 2,700 corporate members and subsidiaries, rather than expressing my personal views.

The Chairman: But from your brief we might assume that you favour what is said in the bill in relation to sports and services because in your opening sentence on page 2 you say:

The Chamber also agrees that sports and service are both properly included within the scope of the legislation.

I must take it then that since amateur sport is covered in the bill, you are giving your blessing to the inclusion of amateur sport.

Mr. Joplin: Well, Mr. Chairman, I guess that if you are going to nail me on that particular point, then you are right. In our discussions we did not go into the impact on amateur sports, and in this case I would say the wording of our submission to you is not quite correct, and here I think we have to stand corrected, and I thank you for drawing it to our attention.

Mr. Booth: Perhaps, Mr. Chairman, it is a case of misery loving company. If we are in the soup, then everybody else might as well be in it too.

The Chairman: May we take it then that this is an inadvertent inclusion giving such a general and overall approval, and that you had not thought of amateur sport in relation to this?

Mr. Joplin: We had not thought of amateur sport in relation to the bill.

Mr. Becket: I wonder if I could add a word here, Mr. Chairman. In this bill we are dealing with business and the restriction and supervision of business practices, and I do not think it occurred to those of us who examined it that amateur athletics, as such, were business and would come within the scope of this act. In a sense, perhaps I am speaking personally. But with regard to professional sport, yes, it is a business, a service industry. Amateur sports, as I understand it, and the senator may correct me, is not, at least *per se*, a business and, in my opinion, amateur sports should not come within the purview of the bill.

The Chairman: Section 32.3(1)(a) provides that:

Every one who conspires, combines, agrees or arranges with another person

(a) to limit unreasonably the opportunities for any other person to participate, as a player or competitor, in professional or amateur sport or to impose unreasonable terms or conditions on those persons who so participate, . . .

Now, he is guilty of a indictable offence. There is no question that the section which I have read does extend to include amateur sports.

Mr. Becket: You are quite right, sir.

The Chairman: The refinements that you are making now have no place in any possible defence to the provisions of the bill if you have conspired, combined, agreed or arranged with any other person. If I coaxed an amateur hockey player to the town in which I live from the town where he plays, might I be conspiring?

Mr. Becket: Yes, Mr. Chairman, under this wording it would appear so, even though you are not doing it for a business purpose. However, when we made our general statement in connection with including this, we may not have examined those provisions as closely as we should. In my opinion, we viewed the business or professional aspect of the sport, and that only, and decided that to that extent it has a place in the legislation. But you have nailed it right down.

The Chairman: Further, in section 32.3(2), in connection with the court determining whether or not an agreement or arrangement violates what I have read, it is provided that:

. . . the court before which such a violation is alleged shall have regard to

(a) whether the sport in relation to which the violation is alleged is organized on an international basis and, if so, whether any limitations, terms or conditions alleged should, for that reason, be accepted in Canada; and

(b) the desirability of maintaining a reasonable balance among the teams or clubs participating in the same league.

In other words, by the threat of court action you would try to assure yourself that you would level out capacities of various teams in the same league. Is it your view that such a provision has a proper place in this bill, having regard to the purpose to which it directs itself?

Mr. Becket: To answer your question personally, no, it is not my view; and I am afraid our committee has overlooked that area. At least, that is my feeling.

The Chairman: Are there any other questions by members of the committee? Have you any other matters that you would like to raise on which we have not questioned you?

Mr. Becket: I have no specific matters, sir. I would just like to emphasize once again two points. One is with respect to the delineation of services. You made reference, as one example, to the Bar Association. I would like to emphasize the comments of Mr. Booth in particular regarding this point, that there is not by any means sufficient delineation in these proposed amendments and there should be. If services are to be included, there is a great deal of further drafting to be done.

My other point reverts to the basis of our main position, which is the preservation of free enterprise. The Chamber takes a very serious view of the encroachments into this area which are in steady progress and are bringing much of our business community under an arm of socialism. Some of these amendments are almost extreme examples of this, and the Chamber is against that. I am sure I am speaking for the Chamber.

The Chairman: Is there anything else you wish to add?

The Canadian Chamber of Commerce delegation withdrew.

We now have as witnesses a delegation from The Canadian Real Estate Association. Who will make the opening statement?

Mr. Brian R. B. Magee, President, The Canadian Real Estate Association: I will, Mr. Chairman.

The Chairman: Mr. Magee, will you identify, for the purposes of the record, the order in which your colleagues are sitting?

Mr. Magee: Honourable senators, I am appearing before you as a representative of The Canadian Real Estate Association. I will make a few introductory remarks. Then I will ask Mr. Albert Fish, the Immediate Past President of The Canadian Real Estate Association and Vice-President of Bowes & Cocks Limited, who has been the chairman of

our Competition Policy Committee, the legislation relevant to which now comes forward under the Combines Investigation Act as Bill C-7, to continue.

On Mr. Fish's right is Mr. B.S. Onyschuk, our Legal Counsel, partner in the firm of Thomson, Rogers in Toronto. On Mr. Onyschuk's right is Mr. J. T. Blair Jackson, Executive Vice-President of The Canadian Real Estate Association. Mr. Georges H. Couillard, Vice-President of the association and President of Sogim Ltée, in Quebec City, is also present, further over on the right. My name is Magee and I happen to be President of this association.

I was very interested in the submission of the Canadian Chamber of Commerce a few minutes ago because, as past-president of the Toronto Board of Trade, which is the biggest member of the Chamber of Commerce, I must say that certain of the views that we put forward may differ somewhat from theirs.

Mr. Fish will make the presentation and basically he would like to bring to your attention certain sections of this proposed legislation which will affect our industry, our business or our semi-profession to a large degree. They will possibly change the whole *modus operandi* we have had heretofore, which seems to have served the consumer and the Canadian public fairly advantageously over the years.

With those few remarks perhaps there will be some questions which we may be able to field later on, Mr. Chairman. I will now turn the discussion over to Mr. Fish.

Mr. Albert Fish, Immediate Past President, The Canadian Real Estate Association; and Chairman, Competition Policy Committee: Thank you.

Honourable senators, our brief has been submitted and I believe all members of the committee have copies. We certainly appreciate this opportunity to appear before you today to answer any questions you may have in connection with our brief. We also appreciate, Mr. Chairman, the fact that you changed our date of appearance so that we could come on May 8 rather than the first of the month, as we had other commitments to meet in another part of Canada.

We are concerned with the implications of this proposed legislation and have been since the Economic Council of Canada introduced its interim report in 1969. When Bill C-256 was introduced in 1971 we were very active and vocal in our concern with and opposition to the original competition legislation. Since that time, we have given it considerable consideration and have spent a lot of time following the progress of this bill through the house.

We have had very good relations, I might add, with the Department of Consumer and Corporate Affairs, through three different ministers, and we have had excellent cooperation from their staff. We have discussed the philosophy of the bill with them. As a matter of fact, we have come to feel a personal acquaintance with them because we have spent quite a bit of time there.

To get down to some of the issues in this legislation, this affects approximately 33,000 real estate people in Canada under about 83 real estate boards. I would like to turn to page 3 and read some of the general comments in that section. It is our submission that if this bill is enacted it could seriously curtail the industry's ability to effectively serve the public; result in a reduction of competence and responsibility to the public; impede the opportunity of free

choice of individuals to cooperate and share their efforts towards owning a living in the vocation of their choosing; distort the free market concept that is the essence of real estate and property ownership; and create and maintain a dangerous precedent in the concept of the state regulating the private affairs and legitimate business operations of Canadian citizens.

Generally the members of this association are prepared to accept and endorse any proposition that will contribute to an improved position of the public and the consumer in the market place, and the reasonable protection of his purchasing activities.

However, we do not feel that this bill fulfils that requirement. If you will read through the bill you will notice that we are placing emphasis on an explanation and discussion of the Multiple Listing Service, known as MLS.

In our attempt to defend the MLS system from the implications of this bill, we firmly and strongly believe that MLS is a service designed and developed in the public interest.

Our boards are non-profit organizations similar to a cooperative. In fact, before the name was changed to Multiple Listing Service, it was called a cooperative listing service.

So in this bill we have put strong emphasis on the Multiple Listing Service operated by many of the real estate boards across Canada.

The act, if applied to our industry, will have very serious repercussions, and I would like to make few points on what we think it will do to our associations and industry.

Firstly, it will prohibit the operation of the MLS system. It could make real estate boards and real estate associations illegal, and, in any event, many of their key functions would become illegal; it will prohibit standard commission rates by real estate boards, it could prohibit entrance requirements, educational standards and codes of ethics of real estate boards and provincial associations; and it could prohibit disciplining procedures of real estate boards and provincial associations.

All these activities will be prohibited under the criminal law as opposed to civil law, and it will put all real estate workers in jeopardy of being criminals and subject to criminal indictment, prosecution or conviction.

I should like to draw the attention of the committee to page 16, and to comment that in this section we have dealt with the Criminal Code consequences as they relate to business practices. As far as our industry is concerned, putting us under the Criminal Code for these activities is abhorrent to us, as I am sure it is to other service industries.

As an example, most professions in the services field, as well as our industry, have established tariffs and fixed commission schedules for many decades. This has been done to eliminate predatory practices on the one hand and price gouging on the other. These schedules and tariffs have reflected the interest of the public and have been accepted by them as being reasonable rates of remuneration. These activities are now made criminal offences under the act.

Surely the only issue is whether or not the tariffs are reasonable. At the very most, this should be a subject matter of regulation by some body and is not an activity which is criminal in nature.

Surely the other activities of service associations, such as codes of ethics, education requirements, entrance and expulsion requirements, developed as a means of self-regulation and policing of the industry, should not become "criminal offences" overnight.

If there is any justification for regulation by the federal government of various business activities in the service industries, surely it should be a matter of civil regulation and not criminal law.

It is our opinion, Mr. Chairman and gentlemen, that the restructuring of all organized real estate boards and associations will be required if this legislation is enacted as presently written.

On page 23 we have made . . .

The Chairman: You are talking about provincial regulations. Is there not a provincial legislative requirement that people who wish to become real estate agents must qualify by examination? I am referring to Ontario.

Mr. Fish: In Ontario there is, yes.

The Chairman: When you say most provinces, what other provinces?

Mr. Fish: All of them have some form of educational requirement to a varying degree. Every province has an examination requirement.

The Chairman: That is administered by the provincial government?

Mr. Fish: Many of them are administered by the real estate organizations themselves. They prepare the courses and in many cases mark the results for the provincial government.

The Chairman: But they are doing that on behalf of the provincial government.

Mr. Fish: Yes.

The Chairman: Is there an overriding provincial statute that makes that requirement?

Mr. Fish: Yes, there is.

The Chairman: What about the commission: is there a general authority of any kind in, say, the provincial statutes of Ontario which gives authority to real estate boards to arrive at rates of fees?

Mr. Fish: No. The only reference in the Real Estate and Business Brokers' Act of Ontario is that if anyone goes to court to dispute, say, a commission, the court will normally award the commission as established in that general area.

The Chairman: Generally speaking, in your experience, is the offer from the intending purchaser to the vendor, or does the vendor make an offer which the purchaser accepts? Which way do you do it?

Mr. Fish: Generally the purchaser makes an offer and it is for the vendor to accept or reject.

The Chairman: On the offer form there is a commission slip at the bottom. It is perforated so that it may be torn off.

Mr. Fish: Some have a perforation. It can also be blocked out.

The Chairman: Of course, the person who obligates himself to pay the commission does not have to sign it, or he can amend the form.

Mr. Fish: That is correct.

The Chairman: The agent does not have to accept it.

Mr. Fish: That is correct.

The Chairman: So it is a matter of bargaining—or let me put it this way: it could be a matter of bargaining.

Mr. Fish: It could be a matter of bargaining. Probably we should have our Legal Counsel comment, but, so far as I am concerned, there would normally be a listing procedure before that offer came into effect. The listing procedure would have a certain commission rate set on it, and that would normally be the commission the vendor would pay.

The Chairman: Is there an agreement or understanding among all real estate people as to the rate of commission that would be charged?

Mr. Fish: I would have to say that most by-laws or regulations of real estate boards at the present time contain in them some reference to what we call minimum or standard fees or commissions. There are some boards which do not, but generally speaking there are standard minimum commissions. The rates are set as minimum commissions.

The Chairman: Is there any sanction if a particular individual or firm does not follow that rate and charges a lower rate of commission?

Mr. Fish: I would think that there probably has been the odd sanction in such circumstances, Mr. Chairman, but generally speaking they are not strictly adhered to. In a case where someone does not follow the standard rate, he is not normally sanctioned by the Board. They are not generally thrown out of the Board because they do charge a lower rate of commission. Generally speaking, I would say that the rates of commission are generally kept to this minimum rate.

The Chairman: When you say they are "generally kept," what do you mean by that?

Mr. Fish: Well, if someone did go below the rate on a certain transaction it does not necessarily follow that he would have any problems with the real estate board in his area.

Senator Beaubien: Are there separate rates set for different areas? In other words, do the commission rates vary across the country?

Mr. Fish: Yes. the Commission rates are set by the local real estate board. The Canadian Real Estate Association does not set the rates. I do not know what the commission rate is in Quebec City, but it may be 5 per cent for exclusive and 6 per cent for MLS. In my area it is 5 per cent for an exclusive listing and 5.5 per cent for an MLS listing. Out West, it may be 6 per cent for an exclusive listing and 7 per cent for an MLS listing, or in some areas it may be 5½ and 6½ per cent. The rates are set by the local real estate boards.

Senator Beaubien: Is there one real estate board governing Toronto?

Mr. Fish: Yes. I do not know how far it extends. There is a separate board in Mississauga and a separate board in Brampton. For the large centre of Toronto itself, it is one board.

Senator Beaubien: And what is the rate under that board?

Mr. Magee: It is 5 per cent for an exclusive listing and 6 per cent for a multiple listing.

Senator Beaubien: And what was the rate 10 years ago?

Mr. Magee: It was 3½ per cent and 4 per cent. Mind you, we are now just talking about housing. When you get into leasing there are different scales of commissions. There is also a different scale for commissions of a lower order as far as builders' houses are concerned. In other words, if a builder has more than five houses to sell, the rate of commission can go down as low as 2 per cent. The standard rate would be for resales as opposed to new homes.

Mr. Fish: There are varying rates for the different types of transactions.

The Chairman: Is your association a federally-incorporated association?

Mr. Fish: Yes.

The Chairman: And is there a provincial statute in Ontario, say, of general application to all those engaged in the business of real estate?

Mr. Fish: Yes, we have the Provincial Real Estate and Business Brokers Act in Ontario, and there is a similar act in every other province of Canada.

The Chairman: And to what extent does that give authority to local boards in the matter of establishing the rates of commission?

Mr. Fish: It does not give any such authority.

Mr. B. S. Onyschuk, Legal Counsel, The Canadian Real Estate Association: Perhaps I could elaborate on that, Mr. Chairman. The Real Estate and Business Brokers Act of the province of Ontario is primarily an act with two directives or directions in it, one being to establish the licensing requirements which the province requires of anybody selling real estate in the province of Ontario, and the second being to prohibit or, under certain penalty, to direct and regulate the type of activities generally, vis-à-vis the public, which the province has indicated are either good or bad. For instance, there are certain practices which real estate agents licensed by the province of Ontario shall not enter into in dealing with the public.

Those are the only two areas, to my knowledge, in which the provincial government has put any form of regulation into the real estate industry.

The provincial associations, of which there are 10 across Canada, and The Canadian Real Estate Association were established quite apart and distinct from any provincial acts. They have been established since 1902 and were established as an attempt within the industry of self-policing, of improving educational requirements and of self-disciplining the industry. So that the boards which engage in this self-disciplinary, self-regulatory work within a city or area, as well as the provincial associations, are quite outside the purview of the provincial legislation.

The Chairman: Even though the local boards would be incorporated?

Mr. Onyschuk: Yes, Mr. Chairman.

The Chairman: If they are provincially incorporated, what authority do they take or are they given under their Letters Patent?

Mr. Fish: Under the Letters Patent they are a voluntary association, in effect, without share capital. Anyone who wishes to belong to the Association can belong and anyone who wishes to leave can leave. The fact is, however, that over the period of the last 70 odd years, most of the real estate practitioners within the individual municipalities have joined their local real estate boards because of the standards of ethics, the educational requirements, and the image that these boards have with the public. The same applies throughout the country. To that extent, the average statistic is that 85 per cent nationally of the practitioners of real estate belong to the local real estate boards and through those boards to the provincial associations and through the provincial associations to the Canadian Real Estate Association.

The Chairman: But the Letters Patent for the local boards gives them the authority to discipline.

Mr. Onyschuk: Yes, they do.

The Chairman: And also to regulate the basis for admission?

Mr. Onyschuk: Yes.

The Chairman: And do you admit people who are not licensed as real estate brokers under the provincial acts?

Mr. Onyschuk: Yes, there is a form of membership known as affiliated membership which is available to individuals who are not licensed as brokers. I think the type of individuals who belong as affiliated members are set out in Appendix "A" to the brief. These consist of organizations and companies which, although not licensed as real estate practitioners, do have real estate activities or business dealings with real estate companies in one form or another. These would include government departments and agencies, a number of provincial and municipal agencies and departments, large retailers, land developers, life insurance companies, and even some banks. They are not full members in the sense that they do not take as keen an interest in the day-to-day affairs of the Association as do the full members.

The Chairman: Do they have a right to vote?

Mr. Georges H. Couillard, Vice-President, The Canadian Real Estate Association: They do have the right to vote in the Canadian Real Estate Association. The by-laws of the local boards are structured differently, so in some areas they might have the right to vote and in other areas they would not have that right.

The Chairman: Among the powers or objects in your charter, is there the right to settle the basis of commission?

Mr. Onyschuk: Yes, Mr. Chairman.

Senator Cook: Perhaps we could be given some examples of the things which members of the association are not allowed to do. We have been told that the act of incorporation permits them to do certain things.

Mr. Onyschuk: It is not the act of incorporation; it is the Provincial Real Estate Brokers Act. It deals with a

number of areas vis-à-vis the public, the vendor. It says, for instance, that you shall not . . .

Senator Beaubien: Gouge too much.

Mr. Onyschuk: Yes, it does say that to a certain extent. Basically it deals with certain unethical practices. I am at a loss to put it exactly. Perhaps Mr. Fish could help.

Mr. Fish: Buying for their own account.

Mr. Onyschuk: Yes, buying for their own account is one. Accepting a listing on a piece of property which is covered on another listing is another.

Senator Cook: Buying on your own account without disclosure.

Mr. Fish: Without disclosure, yes. There are practices such as not listing a property for sale at a certain price to the vendor and then whatever you can get over that is yours, but you have to list it at a set commission schedule.

Mr. Onyschuk: Misleading advertising.

Mr. Fish: Misleading advertising is another. Quite a number of things are in that general area.

Mr. J. T. Blair Jackson, Executive Vice-President, The Canadian Real Estate Association: Perhaps I could elaborate on that. In Appendix "B" attached to our brief, commencing at page 29 we have outlined some standards of business practice that have been adopted by the Canadian Real Estate Association and by all member boards and members.

The Chairman: They are standards of business practice laid down by whom?

Mr. Jackson: Laid down by the Canadian Real Estate Association, adopted by the local real estate boards, and therefore a requirement of membership of the local real estate boards.

The Chairman: Is this the right to create standards of business practice? Is there any authority in the provincial statute?

Mr. Fish: No, this is self-regulating.

Mr. Jackson: It is self-motivating, self-regulating, and self-initiating I suppose. While Ontario does provide some requirements or prohibitions within their act, they are probably one of the better provinces in that area; some of the provincial acts still have not come up to establishing the kind of ethical standards that we feel the public deserve and have the right to expect from our industry.

The Chairman: When you say "we" who do you mean?

Mr. Jackson: We are talking about the real estate industry.

The Chairman: But what body are you talking about when you say "we"?

Mr. Jackson: I am talking about the Canadian Real Estate Association, which is in fact an amalgam of the real estate industry.

The Chairman: That association is a federally incorporated non-profit company, is it not?

Mr. Jackson: That is correct, of which our members are those who are members of local real estate boards, and the voting procedure goes through that way.

The Chairman: But your local boards are provincially incorporated?

Mr. Jackson: Correct.

The Chairman: The local boards are the ones who lay down the standards of business practice?

Mr. Jackson: They adopt the standards that have been promulgated by the Canadian association, and it is in fact a condition of their membership in the Canadian Real Estate Association that they agree to abide by and adopt them.

The Chairman: I take it a local board is a member of the association?

Mr. Jackson: Correct.

The Chairman: Is there any requirement that membership and continued membership involves the requirement that you must subscribe to the regulations laid down by the association?

Mr. Jackson: Not regulations, but the code of ethics and standards of business practice.

Mr. Onyschuk: I think it is important to indicate here that the code of ethics and standards of business practice were developed by the boards. In fact, the Canadian Real Estate Association is the child of the individual real estate boards, who first banded together at a time in their development as provincial associations and then in time as the Canadian Real Estate Association. I wish to point out here that it is not a question of the Canadian Real Estate Association dictating the terms to any of the boards. It is quite the opposite. In fact, there are conventions held each year, and the only voting members are members of real estate boards who, through that conference and through meetings within the year, establish, evolve and change these standards of business practice.

The Chairman: Am I right in saying that there is a tariff of commissions?

Mr. Onyschuk: Yes, there is.

The Chairman: At what level is that tariff established?

Mr. Onyschuk: At the local level.

The Chairman: At the local level?

Mr. Onyschuk: Exclusively at the local level.

The Chairman: The local board would be a member of the association.

Mr. Onyschuk: Yes, it would.

The Chairman: Is there any co-relation there as a result of which the local board establishes such a tariff, or does it initiate it itself?

Mr. Onyschuk: The local board initiates it exclusively itself, and changes and amends it itself. For example, one board immediately outside of Toronto has dropped its commission rates for that municipality very recently because of the inflationary spiral in the marketplace. That is something they do; they have exclusive prerogative over it.

Mr. Magee: I think I should add on that score that both provincial associations and the Canadian association can advise a local board to reduce a requirement that is considered to be too stringent or too expensive for the buying public. For instance, in years gone by certain boards imposed restrictions that before somebody could be a member of the board they had to have an office opened in that city for a year or two years. Other boards imposed initiation fees out of all reason, of \$1,000 or \$2,000 a member.

The Chairman: I was not interested in that angle. I was interested in what, if anything, in the way of advice or direction can or does flow from the association to the local board in the way of commissions?

Mr. Magee: We are getting back to the competitive free enterprise system. To give a proper service to a client a certain minimum fee has to be charged and a minimum commission has to be derived when a sale is made. The law of economics alone will dictate that that commission is somewhere around 5 per cent. It must be borne in mind that that is on completed sales. A real estate salesman is not paid until he actually sells something. There is a great deal of running around that goes on. In our firm as many as 100 houses have been shown to one family before they have made up their mind—and then they have probably gone and bought directly from the vendor!

With respect to the salesman's lot, we hear a great deal of comment, some of it irresponsible, in the press to the effect that if a salesman sells a \$50,000 house in a week he will make \$2,500. I wish they all did, but unfortunately they do not. The average real estate salesman's earnings are, in certain categories, at the poverty level across Canada. You will find cases where probably the average real estate salesman is not taking home a gross of much more than \$6,000 to \$7,000 a year.

The Chairman: My question is directed simply to trying to find some basis of authority for the determination of the scale of fees, rather than the suggestion that might be made that you have conspired together or agreed together to maintain prices.

Mr. Magee: No, we have not agreed, and none of the boards have agreed at all on the schedule of fees.

Mr. Jackson: I am afraid I may have given a somewhat erroneous impression. The condition of membership by boards in the Canadian Real Estate Association are quite simple. Our prime objective was to try to raise the standards of competency and ethical practice. The agreement to adopt and abide by a code of ethics and standards of business practice is, in fact, the only requirement that we place on the boards as a condition of membership, except for payment of dues, showing up at meetings and maintaining certain basic classifications of membership, so that there is again a standardization. That is, so that salesmen as well as brokers can be a part of that organization. Otherwise you would have a distorted picture nationally.

When it gets into areas such as by-laws, we are not consulted nor do we always have knowledge of the individual by-laws.

Commission schedules could be changed and we would not again be consulted in advance nor would we necessarily be advised ultimately. Every few years we have out of curiosity, more than anything else, tried to collect what is

the prevailing rate by real estate boards, and we have not always been successful in getting a total picture there because they don't think it is any of our business and it really does not have any bearing on our operations.

The commission rate, in fact, at one time in Vancouver used to vary between what occurred in the West End and what occurred in North Vancouver, although it was the same board. You can read all sorts of things into that, but the fact is that within the same board there were different commission rates for the different areas. This was so because they happened to be the prevailing rates for one reason or another.

The Chairman: Actually, under the Combines Investigation Act and under this bill there would not appear to be anything you could call a conspiracy that is beneficial or an agreement to fix prices that is beneficial. So when you say, with respect to the man who has to pay the commission, that the charge for the service rendered is reasonable, it would not appear to be a defence at all. It might be in mitigation of the fine or other penalty.

Mr. Jackson: He does not have to pay the commission. He does not have to engage the services of the real estate broker in the first place. That is entirely optional. If he decides to engage the services of a real estate salesman or a real estate broker, then he will know what the cost of that service will be, as things are at the moment. Everything could be subject to negotiation, or argument, at some later point, but then the public would never know.

The Chairman: Oh, yes, but the answer to that might be that, when you go to an industrial concern or a merchandising firm, you don't have to go there; you might go somewhere else. But the one you go to may be in a group of firms that have agreed on a common price. So to say that you do not have to go there does not seem to be a complete answer. I am trying to find out if there is some statutory basis which gives you some authority or whether there is any supervision by the provincial authority.

Mr. Jackson: I think the simple answer is that there is no statutory basis.

Mr. Fish: I have just one or two points to make, Mr. Chairman. I would like to point out that it is our legal counsel's opinion that under section 31(4)(1) under exclusive dealings, we feel that this definition could encompass an exclusive listing agreement for the sale of real property, and we think that there should be an amendment to that section so that it would not include an exclusive agreement for the sale or lease or rental of real property.

The Chairman: As I understand your method of dealing, there are a great number of real estate agents in a community. You can pick whichever one you want to deal with, but if you want him to take on and perform that service you have to make a contract and give him the exclusive right for a period of time.

Mr. Fish: That is correct.

The Chairman: The exclusive right means that if the owner goes out and sells the property himself during that time he still has to pay the commission. Isn't that right?

Mr. Fish: Yes, except that it would appear that that section, in the way it is drafted, is broad enough that it would include that type of contract between an agent and the owner of the property under that exclusive dealing section, 31(4)(1), and I do not think it is the intention that

that type of exclusive listing should be caught. We would like to see, for clarification purposes, that it be excluded.

The Chairman: I understand that and we have made a note of it, but that is only one of your points. The main point would appear to be your apparently standard basis of charge for your services and how you establish that, and whether that could be said to be an agreement to maintain prices, or whatever there may be under Part V.

Mr. Fish: There are other things involved. For instance, there is the operation of a real estate board itself, where we have ethics arbitration procedures, education requirements for membership, and where the MLS system is available to members of the real estate board only.

It is our opinion that the act is broad enough that a lot of these activities could be caught under the criminal section.

The Chairman: We will have a good look at that. Those are two points. Is there a third?

Mr. Fish: The only other point that I should like to make is with respect to misleading advertising. On page 15 there are the words "sales above advertised price". We feel that in the real estate business it is possible to list a property today for \$40,000 and advertise it tomorrow for \$40,000, but then, two or three days later, the owner may wish to increase that price to \$42,000. It has also occurred on numerous occasions that someone would offer more than the list price for a property. For these reasons it is not always possible for us to act within that advertised price.

The Chairman: You are acting as an agent and not as the vendor.

Mr. Fish: That is right.

The Chairman: And is there any further comment?

Mr. Onyschuk: In summation, Mr. Chairman, the real concern of the association and its membership is that the act, because it brings in services in a holus-bolus fashion, does not specifically look at any one particular service industry to determine what will be the effect of the act on that industry. Offences in relation to trade as set out in sections 32 to 38 are broad, and any attempt at restricting competition, as those words are used, or at trying to or actually restricting the entry of a person into a market, or at trying to in any way restrict the competitive behaviour of that person in the market, is illegal.

There are two ways of looking at it, as is obvious. There is the beneficial point of view, which is the way the professions have developed, and I mean the standard professions which are accepted today. However, those professions and the standards which they have developed are affected in the competitive behaviour of the people within the particular professions. To the extent that the Law Society can restrict entry into that market of the number of lawyers and that they are governed by provincial enactment, that presumably would be legal and not covered by the bill. To the extent that that same activity is not legitimized in the real estate industry by any provincial enactment, that would be a criminal offence.

The Chairman: What do you regard as being the effect of a licensing requirement?

Mr. Onyschuk: The licensing requirement in itself would be some defence. However, to the extent that there are ethical requirements established, or a higher standard of education than in certain provinces, where there are fairly

low standards of education, that would be illegal. Certainly to have any sort of a code of ethics applied is not a licensing requirement in any province, and if the board applies that to people entering, or seeking to enter, the profession, that would be a restraint of trade under the section. Because this industry is not covered in all of the areas that the professions are covered in, there are areas where we are not merely greatly concerned, but, where there would be actual contraventions of the criminal sections in the act unless some sort of exemption is given. If it is for a regulated industry and a provincial jurisdiction, or an industry which seeks to regulate itself, and has some body supervising it, that would be fine; but at the moment there are not these provisions for it.

One of the fundamental areas in addition to this, Mr. Chairman, that the industry is very concerned about, is the Multiple Listing Service. That service, in order to operate, must operate on fixed, established commissions. It must operate under certain given rules and regulations. It must operate with certain commission splits and with certain rules as to how a person shall work within that system. We believe that that system is in the best interests of the public; but the question of the best interests of the public is something that presumably would have to be litigated, and it depends on how a person looks at it, and whether he looks at the system with a jaundiced eye, or with a beneficial eye.

The Chairman: But there may not be scope in this bill for you to litigate that issue.

Mr. Onyschuk: That is right. As the bill is drafted at the moment, there is no defence of doing this in the public interest. That is not a defence. So long as there is a conspiracy, combination or agreement as to certain things, it is illegal. The defence of public interest is not a defence under the bill.

The Chairman: Is there anything else?

Mr. Magee: I have just one thing, Mr. Chairman, and then we will thank you for hearing us.

It is interesting to note that under this multiple listing system, in 1963, there were 39,000 transactions. In 1973 that volume had grown to 107,000 sales out of 195,000 listings, which is better than a two-thirds record. The total volume of transactions was \$3.4 billion worth of sales, and over 400,000 Canadian citizens took part in the multiple listing system, so it is an accepted way of marketing, and a fair way, for the consumer.

The Chairman: There are applications of the multiple listing system that are very much in the interest of the person who is seeking to dispose of property.

Mr. Magee: Yes. I think it is only one very small frog in a very big pond, but we take the same attitude as the Canadian Chamber of Commerce, namely, that we are trying to act responsibly in the public interest, and we certainly object to having certain government agencies looking over our shoulder.

The Chairman: It is enough that you have the income tax people in there.

Mr. Magee: Well, they are there as well, of course.

The Chairman: Any other points?

Mr. Magee: No. Thank you very much, Mr. Chairman.

The Chairman: Due to external events over which this committee has no control, it is not possible at this time to indicate when we will meet again, so we will simply adjourn sine die.

*MR. E. RUSSELL HOPKINS, LAW CLERK AND
PARLIAMENTARY COUNCIL:* At the call of the Chair.

The Chairman: All right. At the call of the Chair.

The committee adjourned.

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1974

Canada Parliament
THE SENATE OF CANADA

**STANDING SENATE COMMITTEE
ON**

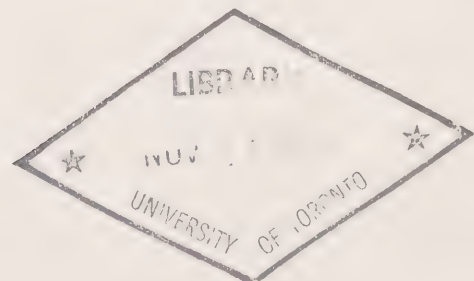
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

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- Booth, Ronald F., Member, Corporate Affairs Committee, Canadian Chamber of Commerce
- Bruce, D. I. W., Q. C., Legislation Committee, Canadian Manufacturers's Association
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